Chinese Daily News *and* The Newspaper Guild, Communications Workers of America, AFL–CIO. Cases 21–CA–34626–1, 21–CA–34717, 21–CA–35041, 21–CA–35063, 21–CA–35110–1, 21–CA–352111, 21–CA–35329, 21–CA–35429, 21–CA–35482, 21–CA–35497, 21–CA–35637, 21–CA–35655, 21–CA–35736, and 21–CA–36157

April 17, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On February 25, 2005, Administrative Law Judge Clifford H. Anderson issued the attached decision. The Respondent and the General Counsel filed exceptions, supporting briefs, and answering briefs; and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified and to adopt the recommended Order as modified.

I. INTRODUCTION

The Respondent is a major Chinese-language daily newspaper published in southern California. In October 2000, the Union filed a representation petition seeking to represent a wall-to-wall unit of approximately 150 employees in the Respondent's Monterey Park facility. An election was held on March 19, 2001, and the Union received a majority of valid votes cast. The Respondent objected to the election results, and during the pendency of the Board's resolution of the representation proceeding, the Union filed numerous unfair labor practice allegations in 14 separate charges from June 2001 through February 2004.[2]

II. DISCUSSION

A. The 8(a)(1) Violations

The judge reviewed 17 separate allegations charging that the Respondent violated Section 8(a)(1) by interfering with, restraining, or coercing its employees in the exercise of their Section 7 rights.

For the reasons stated by the judge, we adopt his findings that the Respondent violated Section 8(a)(1) through the following conduct: threatening employees with unspecified reprisals for engaging in union activities; telling reporter Lynne Wang to resign if she wasn't happy with her job; threatening that employees' bonuses would be reduced because of legal expenses the Respondent would be forced to incur to fight the Union; distributing a memo prohibiting employee discussions of union matters, and threatening employees with termination for such discussions;[3] stating that if employees helped the Respondent break up the Union, the Respondent was going to solve all the Company's problems; instructing employees not to meet together to discuss terms and conditions of employment without the city editor's presence;[4] threatening Wang for remarks made at a union rally; threatening to promote Foreman Ming Chiang to director in retaliation for the employees' petition to remove Chiang as foreman;[5] and interrogating employees about protected activities.[6]

As to the allegation that the Respondent unlawfully threatened to reduce employee bonuses because of legal expenses it would incur in fighting the Union, we note that, in late October 2001, Chief Editor Shih-Yaw Chen established weekly mandatory meetings for reporters in the evenings after work hours. The reporters protested, and Wang wrote a letter to Chen on their behalf suggest-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] On June 30, 2005, the Board set aside the election and ordered a second election. 344 NLRB No. 132 (2005). The Board conducted a second election on September 23, 2005. The tally of ballots showed 52 votes for and 92 votes against the Union, with 12 challenged ballots. In the absence of objections, the Board certified the results on October 3, 2005.

[3] In finding the violation, Member Schaumber relies specifically on the selective nature of the policy, which targets discussion of union-related matters and which employees could reasonably construe as prohibiting Sec. 7 activity. See *Lutheran Heritage Village-Livonia*, 343 NLRB No. 75, slip op. at 2 (2004).

[4] We reject the Respondent's defense that it cured this alleged violation under *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978), in a July 16 memo. The instruction was given at a June 6 meeting of reporters. The July 16 memo was sent only to Wang. Thus, under *Passavant*, the scope of the repudiation was not coextensive with the scope of the instruction. Without necessarily agreeing with *Passavant*, the Chairman and Member Schaumber find that the Respondent failed to effectively repudiate this violation.

[5] Member Schaumber finds it unnecessary to pass on this allegation because the violation and remedy are duplicative of other unlawful threats found in this case.

[6] In adopting the judge's finding that the Respondent engaged in unlawful interrogations, Chairman Battista finds it unnecessary to pass on complaint par. 17, as it is cumulative and would not affect the remedy.

ing alternative meeting times and means of communication. At the first meeting on November 5, Chen told Wang that she could resign if she wasn't happy with his decision (see violation above). At the second meeting on November 12, Chen discussed the contents of Wang's letter and dismissed the reporters' suggestions for alternatives to the evening meetings. Wang testified that during this discussion, Chen berated her for taking notes:

> You are taking notes and will give to the union staff and sue the company. Every little thing you will sue the company. He said, that the company had to hire a lawyer to defend and increase the expense of the company, decrease the profits of the company, will have negative impact on the employees' benefits, including the yearly end bonus.

Our dissenting colleague agrees with the Respondent's contention that Chen's statement to Wang about employee benefits and bonuses was an objective economic prediction and, thus, did not violate the Act. We disagree and find that Chen's statement was not an objective prediction but a threat of adverse consequences for engaging in protected activity. Chen's statement was directed towards Wang's individual activity in support of the Union and suggested that she would be personally responsible for causing reductions in employees' yearend bonuses and other benefits. Moreover, Chen was not responding to questions or comments during normal workplace conversations; he spontaneously raised Wang's note taking, assumed that the notes would lead to a union lawsuit, and, thus, connected the notes to adverse effects on employees' benefits.

Under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), a lawful prediction must be based on "objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control." Id. at 618. The judge found that Chen's statement about reduced employee benefits was not objectively true; rather, the judge found it to be a threat, "*even if* it is objectively true to some degree however small" (emphasis added). The judge further noted that the Respondent presented no evidence to establish any necessary correlation between costs incurred by the Respondent in connection with the union campaign and the continuation of existing yearend bonuses or other employee benefits. In this regard, Chen's statement differs significantly from the predictions found lawful by the Board in the cases relied upon by our colleague.

For example, in *Rospatch Corp.*, 193 NLRB 772 (1971), cited below, the employer presented its employees with specific facts and data comparing its existing benefits to the benefits of local unionized employers. The company president stated that voting in the union would require the employer to incur legal expenses that would reduce profits and hence reduce the employer's profit-sharing contributions. The Board concluded that this statement constituted an economic prediction because a reduction of profits, for whatever reason, would have a direct and necessary impact on the employer's contributions to its profit-sharing plan, which contributions were fixed at 10 percent of net annual pretax profits. Id. at 773.

By contrast, Chen baldly asserted that Wang's note taking would lead to suits by the Union resulting in legal costs, reduced profits, and reduced employee bonuses, but the Respondent offered no objective evidence to directly connect the several links in this speculative chain of events. More importantly, even if Wang's note taking could be reasonably connected to lost profits, the Respondent did not establish a direct link between alleged lost profits and reduced employee benefits and yearend bonuses. See *Pilot Freight Carriers, Inc.*, 223 NLRB 286 fn. 1 (1976) (finding an 8(a)(1) violation where employer told employees, without any objective evidence, that $10,000 spent to counter the union's campaign would have gone directly to employees' compensation but for the union, and that any money he spent in the future to fight the union would come directly out of employees' paychecks).[7]

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[7] Member Liebman further notes that the Respondent's strategy in countering the organizing campaign—and its expenditure of legal fees as a part of this strategy—appears to be a matter entirely within the Respondent's control, not a demonstrably probable consequence beyond its control, as required by *Gissel*. Moreover, the statements regarding the reduction of bonuses came at a time when the Respondent had already committed a number of unfair labor practices, including threats of job loss. Significantly, such was not the case in *Rospatch Corp.*, supra, or *Wilmington Heating Service*,, 173 NLRB 68 (1968), the cases cited by the Chairman. In *Rospatch*, the respondent's statement that it may have to reduce its profit-sharing contributions if it became unionized was not made in the context of any other unfair labor practices. In *Wilmington Heating Service*, the respondent violated Sec. 8(a)(1) by granting preelection wage increases and Sec. 8(a)(5) by refusing to recognize and bargain with the union. However, unlike in this case, the respondent in *Wilmington* did not commit numerous violations of the Act, nor did it threaten employees with job loss if they engaged in Sec. 7 activity. In any event, as the *Gissel* Court pointed out, an employer's statements must be judged "in the context of its labor relations setting." *Gissel*, 395 U.S. at 617. Accordingly, in view of the background of unfair labor practices against which the statement was made, and for the other reasons discussed above, the Respondent's statement regarding the reduction of bonuses did not constitute a lawful prediction, but rather a threat that employees would lose benefits if they continued to engage in Sec. 7 activity.

Contrary to the judge and his colleagues, Chairman Battista does not find this violation. The judge found that Chen informed reporters, at a meeting, that lawyers' fees increased the expenses of the Company, which decreased the profits, negatively impacting employees' benefits, including the yearend bonuses. This statement was a prediction of

In addition, we adopt the judge's recommendation to dismiss the General Counsel's allegation that the Respondent posted antiunion newsletters near reporter Wang's desk to intimidate and humiliate her for her union activity.[8]

Contrary to the judge and our dissenting colleague, we do not find that the Respondent's newsletter of June 6, 2001, violated Section 8(a)(1). The newsletter, "Let the Truth Speak Out," contained two pages of information about current and future changes in employees' working conditions at the newspaper. Specifically, the newsletter explained recent improvements in employees' health insurance and discussed the possible implementation of new printing technology (CTP—Computer to Plate). The letter stated that the newspaper's general management department in Taipei had directed it to conduct a study on the use of CTP at the Los Angeles bureau but that no decision had been made about its implementation. Although the new technology might lead to employee layoffs, it was important for the newspaper to keep current with its parent company in China, from which it received 85 percent of its daily news copy, and with trends in the print industry. The newsletter's tone was informational, not threatening.

The newsletter included a paragraph stating that "history and actual data" indicate that the costs of running a business increase where employees are represented by a labor union. The judge found that by mentioning potential layoffs and union-related costs in the same letter, the Respondent was implicitly threatening employees with layoffs if the Union were elected to represent them. We find that the General Counsel has not demonstrated by a preponderance of the evidence that the newsletter threatened or predicted layoffs if the Union were certified as the employees' bargaining representative.

As noted above, under *Gissel*, a lawful prediction must be based on "objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control." 395 U.S. at 618. The newsletter states that the Respondent was ordered to study the efficacy of CTP, and refers to the economic reality that the newspaper must keep pace with its parent company and with the industry as a whole to remain competitive, indicating that the ultimate decision regarding CTP will be driven by external economic factors and management decisions beyond the Respondent's control. Thus, we do not find that the newsletter states an unlawful prediction related to union activity.[9]

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economic consequences, not a threat of economic reprisals. It is economic common sense that lawsuits involve legal fee expenses, that such expenses decrease profits, and that decreased profits mean, inter alia, lower bonuses. In this latter regard, the judge found that bonuses are dependent upon "general institutional performance." The Board has found no violation under similar circumstances. See *Rospatch Corp.*, supra; *Wilmington Heating*, supra.

The majority seeks to distinguish *Rospatch* because there the employer assertedly presented its employees with "specific facts and data comparing its existing benefits to the benefits of local unionized employers." But that does not change the essential nature of the statement that the Board found lawful. With respect to the issue that is relevant here (legal expenses), the employer there did not spell out the legal expenses. Indeed, such matters are difficult to know in advance with any precision. And yet, the Board found that the respondent's agent "merely predicted a possible economic consequence," and was not making a "threat of reprisal." Here, similar to *Rospatch*, Chen did not spell out what the legal expenses would be. He merely made the observation that expenses reduce profits, and reduced profits could impact bonuses.

On the other hand, the Board's finding of a violation in *Pilot Freight Carriers, Inc.*, cited by the majority above, is distinguishable–for there the "vice" was the employer's assertion that "*but for* the Union the employees *would have received $10,000* . . . ." Here, Chen simply set forth his basis for predicting the economic consequences of lawyer fees on profits and, thus, on benefits—a statement closer to that found lawful in *Rospatch* than that found unlawful in *Pilot Freight.*

Chairman Battista also notes that Member Liebman seeks to distinguish *Wilmington* by arguing that the "context" there differed from the context here because, in *Wilmington*, the respondent neither committed numerous violations nor threatened job loss. She acknowledges, however, that the statements found lawful in *Wilmington* were committed within the context of both 8 (a)(1) and (5) unfair labor practices. Chairman Battista does not find the differences between *Wilmington* and the instant case significant enough to warrant a different result. The 8(a)(1) violation there (grant of a wage increase) was a hallmark violation. See *NLRB v. Jamaica Towing, Inc.*, 632 F.2d 208, 212 (2d Cir. 1980). The 8(a)(5) violation there was a complete refusal to recognize and bargain. Despite this, the statement comparable to the one involved herein was not found to be unlawful. Finally, even if Chen singled Wang out for his comments, that does not change the prediction into a threat. Similarly, even if other remarks of Chen were threats, that does not convert the instant prediction into a threat.

Accordingly, the Chairman finds Chen's statement to be lawful and would not find this violation.

[8] In adopting the judge's recommendation to dismiss, Chairman Battista relies on the judge's findings that the "record does not identify the poster" and "there is no evidence other than the simple posting of the documents to connect the Respondent to an effort to humiliate Wang."

The judge further recommended the dismissal of complaint pars. 7(f), 8(a), (b), and (e), 14, 15, and 20. In the absence of exceptions, we adopt these recommendations.

[9] Although the parent company ordered the study of CTP, our colleague suggests that the parent would not control the ultimate decision regarding CTP. We see no basis for a finding that the parent, having ordered the study, would leave the ultimate decision to the Respondent.

In Chairman Battista's view, a *threat* related to union activity may well be unlawful. By contrast, a *prediction* as to the economic consequences of unionization would be lawful. In the Chairman's view, the Respondent's statements fall into the latter category: predictions that unionization could lead to higher costs, and that economic measures might have to be taken in anticipation of such higher costs.

The judge analyzed this issue using the Respondent's translation of the newsletter. While Chairman Battista would find no violation under either translation, he notes that the General Counsel's own transla-

More importantly, although the judge and the dissent apparently conclude that the Respondent's references to "protective measures" and "precautions against a calamity" are responses to unionization, these are mere assumptions. Reasonably read, these statements refer to the factors cited in the newsletter that can affect the newspaper's economic health, as well as the Respondent's resolution to "conserve costs . . . , enhance efficiency, maintain its business's right to exist, and protect employees' due interest." In short, the alleged connection between the Union's presence and potential implementation of new technology is too attenuated and vague to constitute an unlawful threat. Merely including the two subjects in the same newsletter, without more, does not suggest a connection or constitute a threat. Therefore, we reverse the judge and dismiss the allegation.

B. The 8(a)(3) and (4) Violations

For the reasons stated by the judge, we find that the Respondent did not violate Section 8(a)(3) or (4) through the following conduct, and we adopt his recommendations to dismiss these allegations: announcing its intention to reassign reporter Wang to different beats on June 1, 2001; announcing to reporters that the paper's call-in policy was to make personal contact with someone in the office in such cases when a reporter could not cover an assignment; warning an editor for his numerous editorial mistakes and his failure to improve; decreasing certain employees' evaluation ratings and corresponding bonuses; and suspending and discharging driver Jing Hua Zhang based on a reasonable belief that he was stealing newspapers.

In addition, we adopt the judge's finding that the Respondent's decision to increase Wang's beats after she protested against the Respondent's proposed beat changes violated Section 8(a)(3) and (1). On June 1, 2001, the Respondent announced its intention to reassign several reporters, including Wang, to different beats. The evidence showed that the Respondent periodically changed reporters' beats so that reporters did not become stale covering the same areas over many years. In response to the proposed changes, Wang, on behalf of herself and the other affected reporters, sent a letter to the Respondent protesting the changes and requesting modifications to the assignments. Following her letter, the Respondent revised its proposed reassignments, in many cases according to Wang's recommendations, and implemented the changes on July 1, 2001. Wang, however, received additional beat assignments—government benefits, welfare, and senior affairs—and no corresponding reduction to her assignments, even though she had complained in her letter that her new beats were more onerous than her former beats. The General Counsel met its initial burden by showing that the Respondent's decision to increase Wang's assignments was motivated by Wang's protected activities, and the Respondent failed to show by a preponderance of the evidence that it would have given Wang additional beats in the absence of those activities. Specifically, the Respondent offered no justification for increasing Wang's workload following her letter.

tion—"in order to save for the rainy day and prepare for the unexpected"—is even more benign.

REMEDY

The General Counsel requested that a responsible official of the Respondent read the notice to the assembled employees. We find, contrary to our dissenting colleague, that this extraordinary remedy is not warranted in this case, and neither the General Counsel nor the dissent have offered any evidence to show that the Board's traditional remedies are insufficient. The dissent refers to "the lingering effects of the Respondent's conduct." The conduct occurred over four years ago, and the extent of any "lingering" is not at all clear. In short, there is no showing that posting the Board's notice (in English and Chinese) is an insufficient remedy under the circumstances, and we adopt the judge's recommendation to deny this request.

2. The judge has requested that the Board translate his lengthy decision and any subsequent decisions into Chinese and make copies available for interested parties. We find no precedent for such a requirement, and under the circumstances, creating such translations would be a significant cost to the Agency. In addition, we agree with the General Counsel that such translations would not further the remedial purposes of the Act. Thus, we deny the judge's request to provide such translations.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Chinese Daily News, Monterey Park, California, its officers, agents, successors, and assigns, shall take the actions set forth in the Order as modified.

1. Delete paragraph 1(g) and reletter the subsequent paragraphs accordingly.

2. Substitute the following for relettered paragraph 1(m).

"(m) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the National Labor Relations Act."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. April 17, 2006

Robert J. Battista , Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER LIEBMAN, dissenting in part.

I join in all parts of the majority's decision but two.

First, I would adopt the judge's finding that the Respondent violated Section 8(a)(1) by discussing in a newsletter entitled "Let the Truth Speak Out"[1] the implementation of Computer to Plate (CTP)[2] technology and the possibility of job elimination resulting from that technology. The newsletter, which the Respondent distributed to employees on or about June 6, 2001,[3] contained an article that explains the CTP technology in some detail. The article asserts that the implementation of CTP would reduce staffing requirements with respect to editing, news coverage, and printing. It further states that, in response to employee concerns over possible job elimination, the Respondent wished to inform employees of several matters, which are discussed in four numbered paragraphs. The first of these paragraphs, according to the Respondent's translation from Chinese to English, states that the Respondent is studying the implementation of CTP and advises employees that technological change cannot be resisted. The second numbered paragraph states:

> [H]istory and actual data have told us that the cost of running
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> an enterprise that has [a] labor union increase[s] significantly. In order
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> to take protective measures in advance and to take precautions against
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> a calamity, the Newspaper Agency must consider all options and
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> alternatives, from various cost-cutting measures to enhancement of
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> efficiency, with the objectives of maintaining the survivability of the
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> enterprise as well as protecting the vested interests of the staff.

The third and fourth numbered paragraphs respectively state that no decision on the implementation of CTP has been made and that the Respondent would consider its technology choices with fairness to its employees in mind. The article concludes with the statement that "[o]nly the Newspaper Agency can give our colleagues more welfare and benefit. It has always been like that in the past without a labor union."[4]

The judge, in deciding that the statements in the CTP article violated Section 8(a)(1), found that the Respondent's predictions about possible job elimination as a result of CTP were not based on demonstrably probable consequences beyond the Respondent's control, as required by *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). Rather, the judge found

> First, the Respondent based its prediction of increased costs on "history and actual data" when costs at such a macro level are largely within the control of the employer. Second and importantly here, the Respondent states that the actions it may take regarding technological change will be "protective measures" taken "in advance . . . precautions against a calamity." This statement describes ominously a process of decision-making and events entirely within the Respondent's control and not dependent on economic circumstances but in anticipation of unionization. [Slip op. at 5.]

Thus, the judge found that, viewing these communications in the context of the record as a whole, the Respondent's statements about the implementation of CTP would reasonably be perceived by the Respondent's employees as threats of job elimination if they unionized.

The majority, in reversing this finding, asserts that the decision as to whether to implement CTP is beyond the Respondent's control and that "[t]he alleged connection between the Union's presence and potential implementation of new technology is too attenuated and vague to

[1] The Respondent occasionally distributed these newsletters to employees; the newsletters generally discussed the Respondent's views on various matters relevant to the union campaign and subsequent employee activities.

[2] CTP allows for computer-generated paperless production of a newspaper from the writing and editing stages through the preprinting stage.

[3] All dates are in 2001, unless otherwise noted.

[4] This language is from the Respondent's translation of the article. In the General Counsel's and the Charging Party's version of the article, the corresponding statement reads, "We do not need the union – we have never needed it."

constitute an unlawful threat" and "merely including the two subjects in the same newsletter, without more, does not suggest a connection or constitute a threat." I disagree.

Initially, contrary to the majority, the connection the article makes between unionization, the implementation of CTP, and the elimination of jobs is anything but "attenuated and vague." The article, which appeared in an edition of the Respondent's antiunion newsletter, explicitly states that the Respondent is considering the implementation of CTP as a cost-cutting measure and that CTP would result in the elimination of jobs. The article then goes on to say that the Respondent is aware that running a unionized workplace increases costs and the Respondent would therefore need to take "protective measures in advance and to take precautions against a calamity" by considering "cost-cutting measures" (i.e., CTP). In my view, and likely in the view of a reasonable employee who read the article, these statements could not send a clearer message: that is, that the Respondent is considering "protecting" itself from possible unionization by implementing CTP and eliminating jobs.

While an employer's predictions that jobs might be eliminated as a result of unionization do not always constitute unlawful threats, such is not the case here. In *Gissel*, 395 U.S. at 618, the Court, in distinguishing between lawful and unlawful employer predictions, said:

> A prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control . . . . *If there is any implication thatan employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him,the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation andcoercion, and as such without the protection of the First Amendment.* [Emphasis added.]

The *Gissel* Court also recognized that an employer's remarks must be analyzed "in the context of its labor relations setting." Id. at 617.

Applying these principles here, the Respondent's statements in the CTP article constitute threats, not lawful predictions based on objective fact. The bald assertion that "history and actual data" show that running a unionized workplace increases costs—absent some supporting evidence to this effect—hardly rises to the level of an "objective fact" under *Gissel*. Further, the Respondent's use of the words "protective measures," "in advance," and "precautions against a calamity" in the context of discussing the issues of CTP and unionization clearly indicate that the Respondent may, on its own initiative, decide to implement CTP to "protect" itself from the alleged costs of running a unionized workplace *before* it is unionized and *before* it has actually incurred such costs. Thus, as the judge found, the Respondent's decision regarding whether to implement CTP appears to be dependent not on economic considerations beyond the Respondent's control, but on the Respondent's desire to discourage employees from further organizational efforts by advising them that it may respond to those efforts by implementing a job-eliminating technology.[5]

Additionally, "in the context of the [Respondent's] labor relations setting," the Respondent's message regarding CTP is even more threatening. Some of the highest-ranking management officials engaged in various unlawful acts prior to—and even on the same day as—the Respondent distributed the CTP article to employees. On June 6, the same day that the article was distributed, the Respondent's city editor, Jeff Horng, unlawfully instructed employees that they were prohibited from discussing union matters outside of his presence. In addition, several months prior, in January or February, Respondent President Ming-Sheng Su unlawfully solicited employee grievances and promised employees benefits if they abandoned their support for the Union. Further, in February, Editor-in-Chief Shih-Yaw Chen violated Section 8(a)(1) by threatening union supporter Lynne Wang with discharge for engaging in union activities.

[5] The majority contends that the Respondent's decision as to whether to implement CTP—and in turn, eliminate jobs—will be "driven by external economic factors and management decisions beyond the Respondent's control." As a "management decision" that is allegedly beyond the Respondent's control, the majority points to the fact that the Respondent was ordered to study CTP by its parent company. Further, as an "external economic factor," the majority cites the Respondent's need to remain "competitive" within its industry. Under *Gissel*, the Respondent has the burden of showing that its prediction of job elimination as a result of CTP has been "carefully made on the basis of objective fact to convey [its] belief as to demonstrably probable consequences beyond its control." *See Gissel*, supra, at 618; see also *Schaumberg Hyundai, Inc.*, 318 NLRB 449, 450 (1995). In this case, the Respondent has failed to make such a showing. Initially, contrary to the majority, the fact that the Respondent's parent company ordered it to *study* CTP does not constitute evidence that the Respondent would have no control over the decision to *implement* CTP in the future. In any event, the majority assumes that, because the Respondent's parent company ordered the CTP study, it would likely retain control over this decision. However, there is no evidence in the record to support the majority's assumption. Likewise, there is no evidence to support the Respondent's assertion that, if the Respondent were to become unionized, it could not remain competitive without implementing CTP and eliminating jobs. Accordingly, in the absence of some evidence to support the notion that the decision regarding whether to implement CTP is truly beyond the Respondent's control, the generic references that the Respondent, and the majority, have made to "management decisions," "external economic factors," competitiveness, and the like hardly rise to the level of objective fact under *Gissel*.

Given these circumstances, the judge correctly found that the statements made by the Respondent in the CTP article would reasonably be construed by employees as unlawful threats of job elimination. I would, therefore, adopt his finding that the statements violated Section 8(a)(1).

Second, unlike my colleagues and the judge, I would grant the General Counsel's request that a responsible management official read the attached notice aloud to employees assembled for that purpose. This remedy is generally imposed in cases "where the violations are so numerous and serious that the reading aloud of the notice is considered necessary to enable employees to exercise their Section 7 rights in an atmosphere free of coercion, or where the violations in a case are egregious." *Postal Service*, 339 NLRB 1162, 1163 (2003) (citing *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001)). In my view, this is such a case. We have found that the Respondent has engaged in approximately 13 unfair labor practices, including threats, interrogations, unlawful solicitation of grievances and promises of benefits; instructions to employees to abandon their support of the Union; unlawful work rules; imposition of more onerous terms and conditions of employment; and even "hallmark" violations of the Act (e.g., threats of job loss). And a majority of these unfair labor practices were committed directly by the Respondent's president, Su, or other high-ranking management officials—such as Editor-in-Chief Chen and City Editor Horng. See *Consec Security*, 325 NLRB 453, 454–455 (1998), enfd. 185 F.3d 862 (3d Cir. 1999) (recognizing that participation of high-ranking management officials in unfair labor practices compounds the coercive effect of the unfair labor practices). In these circumstances, additional remedial action is necessary to dissipate the lingering effects of the Respondent's unlawful conduct and to ensure the further protection of employees' Section 7 rights. As the Board has previously observed, "The public reading of a notice is an 'effective but moderate way to let in a warming wind of information and, more important, reassurance.'" *U.S. Service Industries*, 319 NLRB 231, 232 (1995) (quoting *J. P. Stevens & Co. v. NLRB*, 417 F.2d 533, 540 (5th Cir. 1969)), enfd. 107 F.3d 923 (D.C. Cir. 1997). I would, therefore, grant the General Counsel's request for this remedy.

Dated, Washington, D.C. April 17, 2006

Wilma B. Liebman, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post this notice in both English and Chinese and to obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT instruct employees to abandon their support for the Union.

WE WILL NOT threaten employees with unspecified reprisals if they continue their support for the Union.

WE WILL NOT encourage an employee to resign because of the employee's union activities and sympathies.

WE WILL NOT blame an employee who supported the Union for the decrease in all employees' annual bonuses.

WE WILL NOT prohibit employees from speaking about the Union and threaten employees with termination if they speak about the Union.

WE WILL NOT solicit employee complaints and grievances and promise employees increased benefits and improved terms and conditions of employment if they refrain from union organizing activities.

WE WILL NOT prohibit employees from discussing working terms and conditions of employment.

WE WILL NOT threaten an employee with unspecified reprisals for engaging in union and protected concerted activities.

WE WILL NOT interrogate an employee about the employee's union and/or protected concerted activities, and the union and/or protected activities of other employees.

WE WILL NOT interrogate an employee about the employee's union and/or protected concerted activities.

WE WILL NOT instruct an employee not to sign letters or petitions or to otherwise engage in concerted activities.

WE WILL NOT threaten employees with promotion of a foreman about whom employees had concertedly complained, in retaliation for the employees' concerted activities.

WE WILL NOT impose more onerous terms and conditions of employment on employees by adding to reporters' beats when they engage in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

CHINESE DAILY NEWS

Ami Silverman, Esq., for the General Counsel.
Steve D. Atkinson and *Thomas A. Lenz, Esqs. (Atkinson, Andelson, Loya, Ruud & Romo),* of Ceritos, California, for the Respondent.
Bruce Meachum, Sector Representative of The Newspaper Guild, Communications Workers of America, of Jefferson, Colorado, for the Charging Party.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard the above-captioned case in trial in Los Angeles, California, over thirteen days in July, September, and October 2004, with the final evidence received into the record in November and December 2004. Posthearing briefs were submitted on January 11, 2005.

The matter arose as follows. On various dates from June 2001 through February 2004, the Newspaper Guild, Communication Workers of America, AFL–CIO (the Union or the Charging Party) filed the following charges, and in some cases amended those charges, against the Chinese Daily News (the Respondent) with the National Labor Relations Board.[11] During the period the charges were filed and after investigation, the Regional Director for Region 21 of the National Labor Relations Board issued complaints and consolidated complaints respecting various of the charges, culminating in a fourth order consolidating cases, third amended consolidated complaint and third amended notice of hearing issued by the Regional Director on May 27, 2004 (the complaint). The complaint was further amended at the hearing. The Respondent filed timely answers to the complaints and amendments to the complaints and to the General Counsel's trial amendments to the complaint.

The complaint alleges, and the answer denies, inter alia, that the Respondent's agents variously interrogated employees respecting their union and protected concerted activities, threatened employees with reprisals if the employees continued to engage in union activities, instructed employees to abandon their support for the Union and resign from the Union, blamed union supporting employees for causing reductions in employee annual bonuses, solicited employee complaints and grievances promising employees increased benefits and improved terms and conditions of employment if they refrained from union activities. The complaint alleges that the conduct violated Section 8(a)(1) of the National Labor Relations Act (the Act).

The complaint further alleges that the Respondent, by memoranda to employees, prohibited employees from speaking about the Union, threatened employees with termination if they spoke abut the Union, threatened employees with job loss because of their support for or selection of the Union as their representative and threatened an employee with reprisals for engaging in union and protected concerted activities. The complaint alleges that the Respondent's agents solicited employees to sign an antiunion petition and threatened employees with the promotion of a foreman about whom the employees had complained in retaliation for the employees' complaint concerning the individual. The complaint alleges that this conduct violated Section 8(a)(1) of the Act.

The complaint alleges that the Respondent issued a written warning to employee Yun-Min Pao and decreased his annual bonuses for the years 2001 and 2002, decreased the annual bonus of employee Hui Jung Lee for the years 2001 and 2002, and imposed more onerous terms and conditions of employment on employee Ching Fang Chang by changing her job assignments. It alleges that the Respondent suspended employee Jing-Hua Zhang on or about April 22, 2003, and terminated him on or about May 5, 2003. The complaint alleges these actions were taken by the Respondent because the employees engaged in union and/or protected concerted activities and to discourage employees from engaging in such activities. The complaint alleges that this conduct violated Section 8(a)(3) and (1) of the Act.

The complaint further alleges that the Respondent imposed more onerous terms and conditions of employment on em ployee Lien Wang (Lynne Wang), reduced Ms. Wang's annual bonuses for the years 2001, 2002, and 2003, reduced the 2003 annual bonus of employee Yun Min Pao, and implemented a new sick leave policy for employees on or about November 2001, all in retaliation against the employees for their filing charges with the National Labor Relations Board (Board) and/or because the employees either testified or attended a representation hearing in Case 21–RC–20280. The complaint alleges this conduct violates Section 8(a)(4) and (1) of the Act.

The Respondent alleges that the conduct attributed to its agents in the complaint either did not occur or, in some situations where actions were taken, the Respondent's actions were not undertaken for the malign reasons alleged and that, accordingly, the Respondent did not violate the Act as alleged and the complaint should be dismissed.

FINDINGS OF FACT

Upon the entire record herein, including helpful briefs from the Respondent and the General Counsel, I make the following findings of fact.[2]

[1] Cases 21–CA–34261, 21–CA–34717, 21–CA–35041, 21–CA–35063, 21–CA-35110–1, 21–CA–35211–1, 21–CA–35329, 21–CA–35429, 21–CA–35482, 21–CA–35497, 21–CA–35637, 21–CA–35655, 21–CA–35736, and 21—CA–36157.

[2] As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

I. JURISDICTION

The Respondent is, and has been at all material times, a California State corporation with facilities in Monterey Park, California, where it has been engaged in the business of publishing and distributing a daily circulation newspaper, the Chinese language Chinese Daily News.

The pleadings establish that the Respondent at relevant times has derived gross annual revenues in excess of $200,000 from its business operations. Further, during the same periods, the Respondent held memberships and/or subscriptions to various interstate news services, published various nationally syndicated features, and advertised nationally sold products. During these same periods, the Respondent purchased and received goods which were shipped directly to the Respondent's facilities from points located outside the State of California.

Based on the above, there is no dispute and I find the Respondent is and has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The pleadings establish, there is no dispute, and I find the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Respondent is a major Chinese-language daily newspaper published in Southern California. It is part of a multinational family of Chinese language newspapers with the primary enterprise being the Taipei based United Daily News. The Respondent utilizes both its own reporters and various news provision services to obtain news and then uses its own staff to prepare its newspaper pages and to print and distributes copies of its paper to retail distribution points. The Respondent also solicits, receives, prepares and publishes advertising in its newspaper.

At relevant times the Respondent's president has been Ming-Sheng Su. Reporting to him are the general manager David Li and the editor-in-chief, Shih-Yaw Chen.

Reporting to the general manager are Business Manager Steven Gao, and Sales Manager Robert Yang. Gao directs, among other departments, the classified ads department and the circulation department under Circulation Director Hsien-hsiao Hsu which includes truckdrivers working a one time under Foreman Ming Chiang. Also reporting to Li is the plant department, a position unfilled at relevant times. The plant position in turn directs the printing supervisor, Huang Fan-Chiang.

The editor-in-chief directs the Deputy Chief Editor Frank Fang and Editing Director Tzu-Cheng Chu who in turn supervises the editors and proofreaders. Also reporting to editor-in-chief is the city editor, Jeff Horng, who, with the assistance of three deputy city editors directs the reporters.

There was no dispute that above positions and the individuals filling them at relevant times as well as the entire compliment of alleged agents of the Respondent set forth in the complaint were supervisors and agents of the Respondent.

The Union filed a representation petition docketed as Case 21–RC–20280 on October 26, 2000, seeking to represent a wall-to-wall unit of approximately 150 of the Respondent's employees. Preelection hearings on the petition were held from November 9, 2000 to January 16, 2001. The Regional Director issued a Decision and Direction of Election on February 16, 2001. The Respondent's request for review of the decision was denied by the Board on March 7, 2001. The election was held on March 19, 2001 with a tally of ballots providing that the Union had received a majority of valid votes cast and that there were an insufficient number of challenges to affect the outcome of the election.

The Respondent filed timely objections to the election. A hearing on objections was held before Hearing Officer Nancy S. Brandt during the period May 7, 2001 through June 19, 2001, with the hearing officer's report on objections issuing on August 15, 2001. The report recommended the Respondent's objections be overruled and the Union certified as the collective-bargaining representative of unit employees. On September 17, 2001, the Respondent filed exceptions to the hearing officer's report with the Board. The exceptions remain before the Board with no decision by the Board having as yet been taken.

From the time of the hearing officer's report to the conclusion of the hearing herein, the Respondent and the Union had not been able to reach accommodation. The Respondent has taken the position to both the employees and the Union that the Union does not represent its employees; the Union continues to assert to the Respondent and to the employees that it represents employees in the unit. The Union has maintained an ongoing postelection campaign to retain employee support for the Union, regularly communicating to employees, holding rallies and generally encouraging employee union activism. It has also been associated with various actions against the Respondent before other regulatory agencies and in the civil courts.

B. A Note Regarding the Record

The Respondent's publication is written in Chinese characters. The necessary literary facility, if not mastery, of writing with Chinese characters to the extent required for writing and publishing in a daily newspaper is substantial. It was the opinion of all the parties at the hearing that an "old country," first-language classical Chinese education was necessary for the Respondent's reporters, writers, editors and proofreaders so that they would be able to work with sufficient facility in Chinese characters to do their job. A consequence of this Chinese character literacy requirement, augmented by the fact that the Respondent is associated with a newspaper group with its headquarters in Taiwan, is that the Respondent's literary staff is very largely from the old country. Further, its supervisory hierarchy and at least a portion of its unit staff had earlier newspaper experience in Taipei.

Essentially all employees and managers associated with the Respondent speak Chinese as their first language and continue to speak and write in Chinese in their work with the newspaper. Thus, virtually all the events relevant to the trial which involved either the spoken and/or the written word occurred in Chinese. Indeed, essentially all the witnesses at the hearing spoke Chinese as their first language and had sufficiently limited spo-

ken English so that essentially all witnesses testified in Chinese.

Further, as the parties uniformly pointed out, joined in by the learned, if sometimes plaintive, remarks of the official court translator, the Chinese language is a geographically variant, complex, subtle, context sensitive, indirect, elusive, and sometimes ambiguous language. As a result of this fact, the testimony of witnesses in Chinese respecting conversations and communications at issue in the trial were not always easily or precisely translated into English. A consequence of this reality is that the English language translation which is a major part of the record herein may not be subjected to the myriad tests and teachings of the Board's unfair labor practice holdings as part of the legal analysis of the allegations of the complaint without keeping in mind the original context of the events and the danger of loss of precision and detail in translation in the settings and circumstances of events.

Finally, it should be noted that the witnesses herein were essentially all journalists who have spent their careers in writing, proofreading, and editing. The record reflects many witnesses had very substantial literary and intellectual attainments. Yet, perhaps as a result of the real time necessity of courtroom testimonial interpretation during which the witnesses' Chinese testimony is recorded only in its interpreted English form, these witnesses' recorded English words do not properly reflect the witnesses' undoubted excellence of spoken language. I am very doubtful that the record's frequent attributions to witnesses of grammatical simplicities and in some cases errors in English reflect the untranslated quality of the spoken Chinese language of the witnesses. I fear that the quotations I have used below of excerpts of testimony do not do justice to the witnesses quoted. I am unable to edit or otherwise change the record however. While I know of no way of reducing this difficulty, I am pleased to at least note this problem and here ask the forgiveness of the witnesses likely maligned by the fact that their spoken language is and was during their testimony better than appears in the record or as quoted herein.

C. Unfair Labor Practice Allegations

As might be expected from a substantial complaint consolidating multiple allegations taken from over a dozen charges filed over an almost 3-year period, the allegations herein do not arise from a single or even a few events and situations, but are rather based on a variety of settings and circumstances. While no simple organizational approach provides an ideal or even a simple or straightforward vehicle for presentation of all the issues in dispute, the following format seems appropriate.

1. Allegations of violation of Section 8(a)(1) of the Act

The Act provides at Sections 7 and 8(a)(1):

> Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.. .
>
> Sec. 8. (a) It shall be an unfair labor practice for an employer 1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; . . . .

Complaint allegations asserting that an employer's conduct violates Section 8(a)(1) of the Act, by virtue of the reference to Section 7 of the Act in Section 8(a)(1), are alleging that the specified conduct of the employees' agents improperly discourages or chills the employees' rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The complaint at paragraphs 8 through 20 as sub-numbered alleges multiple instances of violations of Section 8(a)(1) of the Act by various agents of the Respondent. Those allegations are presented in the order alleged.

a. Complaint *Paragraph 8—Allegations concerning Editor-in-Chief Shyh Chen*

(1) Complaint , subparagraphs 8(a), b), and (c)—Events of February 17, 2001

Complaint subparagraphs 8(a) and (b) allege that Editor-in-Chief Chen on or about February 17, 2001, in a telephone conversation, interrogated an employee about the employee's union membership, activities and sympathies and threatened an employee with unspecified reprisals if the employee continued engaging in activities on behalf of the Union. Complaint subparagraph 8(c) alleges that on the same date in the Corporate Center, Chen instructed employees to abandon their support for the Union and threatened employees with unspecified reprisals if they continued their support for the Union.

Lien Yi Jung, known as Lynne Wang, was at all relevant times a senior reporter and early, active and known supporter of the Union who testified on its behalf and assisted the Union generally at the representation hearings described above. She and the other reporters are supervised by the city editor who is under the direction of the editor-in-chief.

Before the evening events in contention, Wang had written two articles regarding a union organizational campaign at a hospital that Chen had declined to publish. The refusal was not well received by Wang and was the subject of some discussion and complaint. The Union's campaign newsletter contained an article on the issue characterizing the decision not to publish articles about union organization at other employers as unprofessional. Chen read this article and took umbrage.

(a) Testimony

Wang testified that she was telephoned late in the evening of February 17 or 18, 2001, by then Deputy City Editor Hsiao-Tse Chao and told that the editor-in-chief wanted her to come into the office immediately. Wang asked to be and was transferred to Editor-in-Chief Chen's phone and had a telephone conversation with him. She testified that she suggested she come in at a different time since he was doubtless very busy. She recalled:

> He said, no, you have to come in right away and he complained about the union newsletter. He say I write a union newsletter. I said, I didn't write a union newsletter. If you want to talk about the union could we make appointment to talk another time? He still said, no, you have to come in right away.

Chao, who had severed her employment with the Respondent over a year earlier and was at the time of her testimony a paid employee of the Union, testified that Editor Chen was visibly angry when he asked her to reach Wang by telephone and that she was present during and heard his side of the telephone conversation with Wang. She testified that Chen said to Wang:

> [T]hank you for teaching me something. And he said that the Union newsletter had an article criticizing the management for not publishing the Garfield Hospital article. . . . He said well, somebody will have—bad things will happen about this. And then he kept on yelling. He said he's going to live longer than Lynne [Wang]. In Chinese, it meant to me that he was going to stay with the Company longer than Lynne and Lynne will have a short life with the Company. He kept on yelling. He said that if he was the scapegoat of the Employer, then he was going to find somebody to be his scapegoat...He said that the more the newsletter criticized him, the more popular he would be with the management. Then he said even if the newsletter criticized him with ill will, malicious, he will get his revenge. . . . And then he said—oh, if you want your Union, you could organize your Union, but for tonight, you are to finish your work, so you have to come in by the way.

Editor Chen testified that he had read a union newsletter which had suggested that the Respondent had withheld publishing an article respecting union organizing at a local hospital and that the newsletter was accusing the Respondent of being unprofessional which he felt was unfair. He wanted to know why the Union would make such assertions and asked Chen to reach Wang by telephone. Within the hour Wang called back, in his recollection, and the two talked very briefly. The telephone call did not include any discussion of the union newsletter, but ended with each knowing Wang would come to the office and the two would discuss the matter.

Soon thereafter, around midnight, Wang came to the office and at Chen's direction Chen, Chao, and Wang met in the archive office. Wang testified that Chen

> [L]ooked very angry, he talked very loud and the first he started with something like he is not begging for mercy, he is a tough guy, he would never beg for any mercy. I don't know what I say, you call me in because of a union thing? He say, yes. I told him, I am innocent of that, I didn't write a union newsletter. He said, whether you write a union newsletter or not you knew it yourself. Even if you did not write a union newsletter you must have provided information. I said, I am innocent to that, I didn't do that.
>
> Then he say, the union newsletter, last issue of the union newsletter attack him, he could not argue about that, but this time the union newsletter criticize him as the mentality of emperor.

In Wang's memory the conversation then turned to the merits of the decision to withhold publication of stories dealing with union organization at other employers. Wang and Chao took the position such articles had regularly appeared in the paper and were always appropriate. Chen asserted it was a "sensitive period of time in our own company" and that such articles should not be published and, if even the Chief Editor were to publish such an article, the Editor might be fired the next day.

Wang testified the argument continued with greater heat. Chao argued the case for unlimited publication. Wang recalled:

> [Chao] argue[d] with chief editor, she not agree, she say, the principle of news reporting we should not cut the article just because 100 workers in our own company, the readers have the right to know. She added even more mad, she said, don't you argue with me for the readers' right to know. She also said, don't you think your work performance is so perfect that she cannot find any fault with that? [Chen] said, if you want to go litigation that will make it ever easier for the company.

Following colloquy with counsel, Wang's memory of Chen's remarks was restated by the translator:

> Don't think whatever you said or did is complete no fault, we probably will find something in it. Something wrong, some fault in it. If you want to go to legal process that is fine, much easier for us.

During the discussion, Wang took written notes. This prompted Chen to ask Wang if she planned to use the notes to write another article for the union newsletter. Wang said: "of course not." Wang estimated the meetings length as about 1–1/2 hour and characterized Chen as very angry and that she had never seen him in such a state before. When asked at the conclusion of her direct examination if she recalled any other statements by Chen she recalled:

> [Chen] did mention that, he said the meeting where he told you guys for the union you already done so much, it is time to stop. He say that again, you have to stop union organize. He say the workers will be the big loser.

Chao testified the events upset her because Chen was so angry and rude she was fearful of possible violence. Further, during her disagreement with Chen she was nervous:

> I was like a half supervisor/half employee kind of hostage. I felt that I shouldn't be insubordinate. I thought if I left that night, I might be fired.

Chao, however, corroborated Wang's estimate of the duration of the meeting and well as its content generally. She specifically recalled Chen told Lynne [Wang]: "Don't think that you're so perfect that I couldn't find fault with your work."

Mr. Chen testified that he called Wang into the office because the union newsletter article attacked him personally and he wanted to clarify his position with her. He did not recall the length of the meeting other than to characterize it as "not too long." He testified that he well knew that Wang was a supporter of the Union but did not threaten nor interrogate her.

(b) Analysis and conclusions

Not surprisingly, the General Counsel and the Respondent each argue their witnesses to the events should be credited. I have considered the testimony of each of the three participants with special regard to their demeanor during testimony and their emotional state during the contested events as well as their clear personal association with the contesting parties.

Turning initially to the phone conversation, I find, consistent with the versions of Wang and Chen that the call between the two was straightforward and that Wang was peremptorily summoned to the office to discuss with Chen the references to Chen in the union newsletter. Chao was not on the telephone line when Chen and Wang spoke. She was very upset during the interchanges and I do not believe that here more elaborate version of what she overheard Chen say into the telephone as he spoke to Wang should be credited beyond that testified to by Chen and Wang.

As to the meeting, I find that it lasted for a substantial time. While it is difficult for meeting participants to accurately estimate their duration, both Wang and Chao testified that meeting was well over an hour. The undisputed testimonial details of the conversation surely required a substantial amount of time simply to take place. Clearly Chen's bland characterization of the meeting as not too long is wishful thinking.

In resolving the conflicting versions of the statements made at this meeting, I have taken particular account of the very strong emotions in play. Clearly Chao was agitated and frightened. Editor-in-Chief Chen was also clearly in high dudgeon. His anger was evident first in the objective fact that he summoned Wang to a midnight meeting. I further find, however, that as the editor-in-chief was very sensitive to public criticism of his professionalism and offended by the union newsletter's references. Both Wang and Chao testified with conviction and persuasiveness that Chen was hot indeed.

Given that the meeting was lengthy, that Wang was summoned on short notice to defend herself and the union newsletter, and that Chen was well and truly angry during the lengthy exchange, I have a hard time fully crediting his bland denials and disclaimers that the meeting was not long and was simply an exchange of views. Relying on the corroborating parts of the testimony of Chao and Wang, which I credit over the denials of Chen, I find that during a discussion with some passionate if not heated exchanges, Chen made it clear that he viewed the union newsletter as a personal attack upon his integrity and that he associated Wang with that union newsletter. Thus, I specifically credit Wang and Chao when they testified to Chen's reference to Wang's taking notes and his rhetorical question to Wang: Was she going to use the notes for another union newsletter?

The General Counsel and the Respondent argue the broad context of the conversation with citation to supporting cases. The Respondent emphasizes the fact that Wang and Chao were known union supporters, Chao a statutory supervisor, and argues that a contentious exchange or freewheeling argument regarding the professional issue discussed should not be found unlawful. The General Counsel points to the late night angry summoning of Wang to the Respondent's offices by a high official of the Respondent, his isolation of Wang and Chao in an unused office for over an hour, and his angry diatribe against the union newsletter and Wang's connection with it.

As noted, I have not found any improper statements by Chen to Wang in their telephone conversation.[3] Complaint subparagraphs 8(a) and (b) will therefore be dismissed. Complaint subparagraph 8(c) alleges that Chen instructed employees to abandon their support for the Union and threatened employees with unspecified reprisals if they continued their support for the Union. I find, based on the entire episode, that Chen did in fact make it clear to Wang that attacks upon him in the union newsletter such as that under discussion were intolerable, that he associated her with the union newspaper, and impliedly—given his heat and the force of his remarks—threatened unspecified reprisals. This is a classic situation where the full context of events informs the analysis and supports the finding of a violation. There is no doubt that the subject of Chen's remarks and wrath generally was the Union newsletter and Wang's association with the Union and its newsletter. The totality of Chen's conduct in the midnight meeting without question would reasonably have a chilling effect on Wang's continued exercise of her union activities in these regards. I therefore sustain the General Counsel's allegation at omplaint subparagraph 8(c).

(2) Complaint subparagraphs 8(d), (e), and (f) - Events of November 5 and 12, 2001

Complaint subparagraphs 8(d) and (e) allege that on or about November 5, 2001, at the Respondent's Corporate Center facility, Chen encouraged an employee to resign because of the employee's union activities and sympathies and threatened an employee with termination in retaliation for the employee's union membership, activities, or sympathies. Complaint subparagraph 8(f) alleges that on or about November 12, 2001, at the Respondent's Corporate Center facility, Chen blamed an employee who supported the Union for the decrease in all employees' annual bonuses.

The allegations relate to two separate evening reporters meetings conducted by Chief Editor Chen and City Editor Horng and attended by reporters. There were two separate meetings, however the substance of the two meetings was not separate in the testimony of the witnesses. In order to maximize the orderly presentation of the evidence argument and analysis, the allegations and testimony regarding these complaint allegations are considered together.

(a) Testimony

Wang testified that in late October 2001 she learned that management had established a new mandatory evening office attendance regimen for reporters to begin the week of November 5, 2001. The reporters were not happy with the new policy and discussed the matter among themselves by telephone prevailing upon Wang to prepare a letter to management on the matter. Wang prepared such a letter which the other reporters had an opportunity to read and suggest changes. The letter, dated October 31, 2001, and titled: "Reporters' Suggestions—A

[3] The late night summoning of Wang to the office to discuss the union newsletter is not alleged as a violation of the Act.

Plan to Promote Communication between Chief Editor and Reporters," addressed to the president, chief editor and assistant chief editor was transmitted to the Respondent by facsimile transmission on or about October 31, 2001.

The letter, submitted in Chinese, and two pages in length in single-spaced, typewritten form in English translation, described the new policy and the fact that reporters did not have the opportunity to meet with the City Editor prior to its implementation, and indicated the reporters desired by the letter to give their opinions and sentiments. The letter protested, in some detail, the onerous nature of the policy, its unfairness and impracticality and suggested various alternatives to the time and frequency of the required office attendance.

Consistent with the new policy, Wang come into the office the evening of November 5, 2001, and a meeting was held with attending reporters including Wang, George Pao, Jenny Chen, Cindy Chen and Chief Editor Chen, and City Editor Horng.

Wang testified that the meeting began with reporter complaints about the meeting time and that she proposed a daytime meeting time and e-mail communication between the reporters and management. Chief Editor Chen said no to the proposal. Wang noted that she was attending on her day off—other reporters were attending after a full workday. She asked if the Company was going to pay reporters overtime. Chen became angry and questioned the reference to overtime and the two exchanged words about whether overtime was appropriate with Chen becoming ever more angry. Wang recalled:

> And [Chen] say, I warning you—I said, me? He said, yes, you. I am warning you, you are at—if you are not happy write your resignation letter. I will be very glad to sign it. He say, there are a lot of people who want to do your job. He turned his head asking Jeff Horng, do we receive a lot of resume, and Jeff Horng nodded his head yes.

Wang testified that Chen followed these events with a derogatory remark to her in Chinese which in her understanding of Chinese culture was deeply insulting to a woman and highly improper.

Wang testified that during the November 12, 2001 evening meeting the letter she sent in regarding the reporter's views on the meetings was discussed. Chen raised the matter asserting the letter was simply Wang's opinion. When reporters Emma Yen and George Pao spoke up and said the letter was their work also, Chen suggested the letter was then only the work of the three of them. Yen responded that to the contrary it was in fact the opinion of all the reporters and it was not a matter of the Union but simply a communication to management from the reporters.

Wang testified that she took notes during the meeting and that this prompted comments from Mr. Chen.

> Chief Editor look at me, you taking notes. In Chinese taking notes means check—you are just a check-check-check. You are taking notes and will give to the union staff and sue the company. Every little thing you will sue the company. He said, that the company had to hire a lawyer to defend and increase the expense of the company, decrease the profits of the company, will have negative impact on the employees' benefits, including the yearly end bonus. At that time November is about the time to do the yearly end evaluation of all the workers.
>
> I asked him, are you telling me because I wrote the—you are going to give me less yearly end bonus? He looked so mad, he said, you try to—he say, I try to sue the company and the company has to hire lawyer to defend, that would increase the cost of the company, decrease the profits and make all the workers' benefits including the yearly end bonus.

Ms. Ching Fang Chang, a reporter during the time in question as well as an active union supporter, corroborated Wang's testimony respecting this meeting although she conjoined some statements made by the same individuals in the two meetings, discussed supra. She described the Chen-Wang exchange respecting Wang written notes and Chen's reference to the annual bonus:

> [Chen] say you think that you can use this against me. He said a couple of things, but the one thing is he say you will use this and you will tell the Union and then the Union will come to sue the Company, and the Company's expenses will increase and you guy's bonus will suffer by that. . . . And then Lynne Wang asked Chief Editor, she say so are you saying that our annual bonus can suffer because Union sues the Company. And then Chief Editor got angry. Then he say you don't use my words to— don't try to use these words against me.

Editor-in-Chief Chen denied threatening Wang during these meetings. He also testified respecting specific statements made in the several meetings in dispute herein. He described the meeting in which he and Wang discussed the scheduling of evening reporter meetings:

> During the meeting, a reporter named Lynn Wang, from the very beginning she was taking a note everything I said.
>
> And maybe she is against to call upon this meeting. She believed that the meeting should be called upon during the daytime but there is many difficulties to have the meeting during daytime; first, because our reporter was already on the beat during daytime; and there are a lot of press conference going on. They need to cover the conference that, you know, whenever the meeting that constantly a lot of people either late or cannot show up. Or left earlier. There are a lot of discussion that is becoming incomplete.
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> Therefore, this meeting was called upon during the evening because the work --it was in the evening after all those article—the reporter article already in. Then call upon the meeting meanwhile this is overtime and then for attending this meeting a reporter should be paid overtime pay.
>
> I told her that the reporter is a professional and the working hours are flexible, that there is a certain law in California of such a regulation. But she won't let the meeting continue. She kept interrupting my speech.
>
> Then I told her that right now the purpose to have the meeting is to do the job right and do it better and I also explained to her the working environment here in the Chinese Daily News is the best in all the Chinese newspapers.
>
> . . . .

> She was continue taking the notes. I asked her that you taking a note, the purpose to misinterpret what is taught, my speech, and then turn around and going to sue the newspaper? Because at the time they are already organizing the Union and also file some charges against the newspaper.
>
> And then to sum up, the charges relate to me personally and it is to point out something I did not say but the charges said I did; that I denied responding. If you feel that you are not satisfied to the working environment here, America, this is a free country, our door is, you know, wide open. Some people want to come in; some people want to leave. If you are not satisfied, you know, you can leave also, that this is not a pinpoint to a certain people. it is an overall to any business entities and Lynn Wang interrupt what I said.
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> She said, are you threaten me? You want me to leave? She was, you know, is kind of misinterpreted what I said, that my general analysis, she cut it, you know, and she just distorted what I meant and I insist that I want her to leave

City Editor Horng did not recall the detail of the Wang-Chen exchanges but testified that Chen told Wang at one of the meetings that if "there is a lot of additional expenses occurred and that relatively the employees' benefit will be reduced". The Respondent challenged Wang's view that the statement made to her was improper and insulting.

(b) Analysis and conclusions

The General Counsel argues first that its witnesses should be credited and further notes that the Respondent's criticisms and threats were directly related to Wang's union and protected activities and were initiated by Chen not Wang. Thus, the General Counsel notes that it was Chen who raised the matter of Wang taking her notes to the Union or using them to sue the Respondent.

The Respondent urges its witnesses be credited and cites cases for the proposition that angry but otherwise lawful conversations do not simply become unlawful if provoked by employee protected activities. Counsel for the Respondent on brief notes that the Union at the time of the events in controversy had been making the Respondent's legal fees a basis for criticism of the employer for wasting resources that employees might share. Further counsel emphasize that Chen's statements were in fact true in the sense that employee bonuses were based on the Respondent's profits and that the Respondent's legal expenses reduced that profit.

While Chen made general denials respecting his making of threats, the testimony is not at wide variance when specific statements are considered. Chen initially denied telling Wang that, if she was unhappy she could write her resignation letter. Thereafter during his description of the things he did say to her, his testimony made it clear that his recollection was not at fatal variance with that of Wang in these regards. Generally, I credit the testimony of Wang and Chang insofar as I consider the specific complaint allegations below. The much more vague recollections of Chen and Horng are not significantly at variance and to the extent they are susceptible to be so construed, they are not credited. For the reasons set forth blow, I simply do not reach nor resolve the dispute between the parties respecting the remark of Chen respecting which Wang took great offense.

The allegation that Chen encouraged an employee to resign is based on the testimony of Wang, credited herein, that Chen told her that if she was not happy to write her resignation letter and he would be very glad to sign it. The statement was made to her in the context of the two's argument respecting the reporters meetings and the additional hours required and whether or not reporters were entitled as a matter of law to premium or overtime pay. The position of Wang, correct or not, clearly arose out of the reporter's unhappiness with the Respondent's newly required evening office meetings. Chen well knew or reasonably should have known of the employees concerted activities in these regards and Wang's role in advancing employee complaints to him in the meeting.

But is such a statement a violation of the Act? The Respondent on brief simply characterizes the statement that, if an employee does not wish to follow an employer's rules, the employee may always quit, as at worst a statement of the obvious. The General Counsel cites authority for the proposition that such an invitation is "essentially a thinly-veiled threat" to terminate her for her protected activities citing *NLRB v. Intertherm, Inc.*, 596 NLRB F.2d 267, 276 (8th Cir. 1979). The General Counsel's cited case is relevant for the proposition that the entire context of events must be considered and that words innocent in themselves can rise to the level of a threat. Given the full context of the Wang-Chen interplay at the meeting and the close relationship of the statement to Wang's protected activities, I find that Mr. Chen's invitation to Wang to resign is an improper, if veiled, threat directed to her protected concerted and union activities that violates Section 8(a)(1) of the Act. Subparagraph 8(d) of the complaint is sustained.

The conduct found to violate the Act immediately above falls within the language of complaint subparagraph 8(e) but I read the General Counsel's brief as directing this complaint allegation to the disputed statement Chen made to Wang as described above respecting which Wang was very upset and regarding which substantial testimony and cultural explanation was offered concerning the objective meaning of an apparently colloquial expression. Since the remedy for the violation found as alleged in complaint subparagraph 8(d) encompasses any remedy that might be directed regarding paragraph 8(e), and in view of the difficult cultural questions as well as the difficulty in dealing with the clearly differing subjective views of the speaker and listener, I shall not independently resolve the implied argument of the General Counsel that the statement in contention is a free standing threat of discharge. Complaint sub–paragraph 8(e) shall be dismissed.

The complaint subparagraph 8(f) allegation that Chen blamed an employee who supported the Union for the decrease in all employee's annual bonuses presents legal issues. Factually, I have found that Chen made the statement Wang attributed to him. Does it violate the Act for an employer to inform its employees that the costs of its legal defense to protected, employee activities has the potential to reduce profits and employee bonuses dependent on them? The Respondent would seek to duplicate the Board's "threat versus prediction" analysis

where in certain cases an objectively stated employer proposition may be made to employees even if it addresses a possible adverse impact on employees arising from their protected or union activities.

On the facts of this case, however, the bare "fact versus prediction" analysis must be informed by the larger context of events. Here the context and circumstances of the Respondent's action clearly renders the statement a threat even if it is objectively true to some degree however small.[4] First, the Respondent's agent is a high level official speaking at a mandatory meeting. Second, the remarks were initiated by that agent following a spontaneous commentary on Wang's note taking in which the notes were connected by Chen to the Union and frivolous lawsuits. Third, the Respondent had made threatening remarks at the meeting found violative supra, directed toward Wang and her protected concerted activities in discussing reporters concerns regarding meeting scheduling. Such a fraught context simply does not support the benign out-of-context analysis the Respondent seems to advocate, I therefore find the conduct at issue violated the Act and sustain subparagraph 8(f) of the Act.

(3) Complaint subparagraphs 8(g) and (h) – The November 15, 2001 memorandum

Complaint subparagraphs 8(g) and (h) allege that the Respondent by memorandum to employees wrongfully prohibited employees from speaking about the Union and threatened employees with termination if they spoke about the Union. There is no dispute that the Respondent, over the signature of Chief Editor Chen, distributed a memorandum dated, November 15, 2001, to its editing department employees. Employees were instructed to read and sign the document and did so.

> The memorandum addressed numbered issues and asserted in its latter part:
> Three. Computer Layout Room work discipline must be maintained. For a long period in the past, too many gossips have been said and rumors frequently circulated in the Layout Room, turning it into an "evening rumor processing center." I hereby reiterate that under the law, employee discussion of union matters during work time is strictly prohibited, discussion of other people's rights and wrongs or their faults and merits is also prohibited. This is a matter of the law and work discipline.
> Four. Supervisors must be fair and neutral in work distribution. He must be impartial. Colleagues who detect unfairness may seek responses from any level's supervisors for a fair and reasonable solution. Private discussion, clique forming personal gains, attacks on co-workers, vengeance seeking, etc. are not permitted.
> Five. We can review our man-power distribution situation and the applicability of labor division and layout division by rotation. But to sum it up, the system had its flexibility and merits in the past. I hope to maintain it to the best I can.
> We in the Editing Department have always been working together in a congenial and pleasant atmosphere. This is a tradition that must be maintained. The newspaper has the responsibility to protect this healthy work environment for all colleagues. I have an absolute aversion for rumors, hearsays and cliques. If a colleague is found to have violated any rule during work hours, for example, he or she has engaged in activities violating the law and regulations, spread rumors that are untrue, alienated supervisors or acted in violation of other rules, he or she will be reassigned in case of minor offenses and dismissed in case of major offenses. All will be dealt with without leniency.
>
> I hope our colleagues will treasure the fortuity and opportunity of working here. Let's support and protect our work environment from harmful elements. Thank you for your cooperation!

Employee Pao testified without challenge that the Respondent had no policy regarding work discussion before the memorandum's issuance. At the time of the circulation of the memorandum, the election had been conducted and the hearing officer's report recommending dismissal of the Respondent's objections was before the Board on exceptions.

Counsel for the General Counsel makes several arguments. First, she argues that the rules restricting union activity were promulgated and first applied during the period when the organizational campaign was in process and the creation of the rule was not justified by any showing that the restrictions were necessary to maintain production or discipline. In such circumstances, the General Counsel argues, it is a violation under *NLRB v. Babcock & Wilcox* Co., 351 U.S. 105 at 113 (1956). Second, she argues that the restrictions imposed under the memorandum are limited to union activities and do not generally limit discussion of other subjects. The Respondent argues the allegation is a "non-issue" in that the memorandum cites a neutral rule intended for consistent application under Board no solicitation standards.

I find and conclude that the Respondent by issuing its memorandum and thus promulgating and maintaining a no solicitation rule during a union campaign without explanation or justification violated Section 8(a)(1) of the Act. See *NLRB v. Roney Plaza Apartments*, 597 F.2d 1046, 1049 (5th Cir. 1979), which held that promulgating a no-solicitation rule during a union campaign was strong evidence of discriminatory intent. The exhortation to employees not to talk about the Union and to "protect our work environment from harmful elements" provides additional evidence of the union activities focus of the rules. Finally, the rule was promulgated at a time when the Respondent was engaging in other unfair labor practices and was actively opposing the Union's efforts to retain union support among employees in the postelection period.

I also find the rules selective and overbroad. While I do not believe the rules are limited to union activities in the narrow institutional sense, neither do I find them to be neutral or broadly applicable to all personal or nonbusiness activities. Rather the rules or limitation seem to largely address both Union—and that by explicit prohibition—and other protected concerted employee activity for mutual aid and protection. Such selected restriction violates Section 8(a)(1) of the Act. *Cardi-*

[4] While it is conventional wisdom that all legal expenses are ruinous, no evidence was submitted on the issue nor on to what degree if any the bonuses would have been effected at any relevant time.

nal Home Products, 338 NLRB 1004 (2003). I therefore sustain complaint subparagraph 8(g).

The memorandum asserts:

> If a colleague is found to have violated any rule during work hours. . . he or she will be reassigned in case of minor offenses and dismissed in case of major offenses. All will be dealt with without leniency.

By the memorandum's terms, it threatens employees with discipline up to termination, if they spoke about the Union. Threatening discharge of employees who violate an invalid rule is itself a violation of the Act. Accordingly, I sustain the General Counsel's complaint paragraph 8(h).

b. Complaint paragraph 9 – The February 2001 statements of President Ming Sheng Su

Complaint paragraph 9 alleges that on or about February *2001,* President Ming Sheng Su, at the Respondent's Corporate Center facility, solicited employee complaints and grievances and promised its employees increased benefits and improved terms and conditions of employment if they refrained from union organizing activities.

(1) Testimony

The Respondent's president, Ming Sheng Su, took office just before the filing of the representation petition in late October 2000. Following extensive preelection hearings which extended from November 9, 2000 to January 16, 2001, the Regional Director issued a Decision and Direction of Election on February 7, 200,1 and the election was conducted on March 19, 2001.

Wang testified that she learned with other employees of President Su's appointment in October 2001 and first met with him at his request along with fellow reporter Chao. Wang described the meeting in Su's offices as cordial with Su suggesting he was a "nice guy" and that "he wanted us to disband the Union." Wang answered that the employees did not organize the Union because of Su and would not disband it because of him. She told him he should not take the union effort personally. Wang said that she further told Su that many big companies had unions and ran smoothly so he should not regard it as a bad thing. President Su told the two: "We are Chinese, we have our Chinese way to run the business, why open a book to the Americans?" In Wang's memory Su also told her not to attend the NLRB representation hearings: "Don't go there, don't pay attention as things will go away."

Wang recalled the two reporters met a second time with the president under similar circumstances in late January or early February 2001, which date she placed as "the day after [President Su's] birthday and also after Hsiao Chao testified." President Su told her that he heard she was still attending the NLRB representation hearings and that he was not happy. He stated in Wang's testimony: "We are big family, we can solve the problem among ourselves. Give him a chance." Wang then discussed with Su her inability to have an article published concerning an union organizational campaign at another employer.

Chao testified that she was contacted by telephone and told that President Su wanted to meet with her. She took Wang with her and the two went to Su's offices. At the meeting Su told her not to attend the NLRB representation hearings and that "he believed that reporter Lynne Wang and I could help him to disband the Union." Chao continued:

> Lynne Wang told him that even in the government and big companies they also have Unions. Union is not a bad thing.
>
> Q. And did President Su say anything in response to that?
>
> A. Yes. He explained that the Unions are Americans and the Company didn't want to open to Americans.

Chao recalled the three met again in late January or early February under similar circumstances. By this time Chao testified she had withdrawn from active organizational activities and brought Wang because "everybody knows that Lynne Wang has been the prominent leader . . . of the union campaign." She described Su's remarks at the meeting:

> President Su was angry this time. He said that I shouldn't go testify and I should say that I was not a supervisor. Then he was more angry at Lynne [Wang]. He said that he heard that Lynne was sitting in the hearing the whole time. . . . He kept on saying that once the Union came in, then he had to go. So he asked us to help him to break the Union apart. He promised that he was going to solve all our problems, all the problems in the Company.

In response Wang gave Su an article she had written about another company and its union that had not been published and Su said he would read it.

President Su did not testify.

(2) Analysis and conclusions

The General Counsel urges the single 8(a)(1) violation alleged in complaint paragraph 9 based on the testimony of Wang and Chao offering the broader testimony regarding the two meetings as supporting background only. Counsel for the General Counsel cites cases for the traditional notion that promises of benefit conditioned on employee abandonment or resistance to union organization is a violation of Section 8(a)(1) of the Act. Counsel for the Respondent argues the General Counsel's witnesses have "severe credibility problems" and that the allegations are inherently improbable. Finally, the Respondent argues that the alleged statements in context are lawful under Section 8(c) of the Act and the Board's decision in *Rossmore House,* 269 NLRB 1176 (1984).

I found the witnesses' uncontradicted testimony of President Su's statements to be credible. I found each had a believable demeanor as well as and apparent recollection of events. I reject the argument of the Respondent that their testimony should be discredited. Having credited Wang and Chao's testimony, there is little question that the statement of the highest official of a employer, to known union supporting employees summoned to the official's office, that if they helped him break the Union apart, the official was going to solve all their problems in the Company, is a violation of Section 8(a)(1) of the Act. *Robert Orr/Sysco Food Services,* 343 NLRB No. 123 (2004); *Yoshi's Japanese Restaurant,* 330 NLRB 1339 (2000). I find therefore that the Respondent through President Su violated Section

8(a)(1) of the Act in making such statements to employees as alleged. I therefore sustain the General Counsel's complaint paragraph 9.

c. Complaint paragraph 10 - June 6, 2001 meeting with City Editor Horng

Complaint paragraph 10 alleges that on or about June 6, 2001, the Respondent by City Editor Horng, at the Corporate Center facility, instructed employees that they were prohibited from discussing working terms and conditions of employment. The allegation turns on the events at a meeting held by Chief Editor Chen and City Editor Horng on June 6, 2001.

On or about June 1, 2001, changes in the beats of reporters were announced by management. Beats are either geographical areas or subject areas which particular reporters are assigned. General reassignments of beats had not occurred for several years and the action produced interest and concern among reporters.

(1) Testimony

Lynne Wang testified that she and other reporters were concerned with the beat changes and had not been informed of other reporters' postchange beats. She called a meeting of reporters. They discussed the changes and together they formulated an accommodation that they believed would make beats more reasonable and workable for reporters. Wang was selected by the reporters to write a letter to management communicating the reporters' views.

Wang testified she spoke to City Editor Horng and told him the reporters were preparing a proposal and he said he could accept changes in the beat assignments. A few days later she prepared a three-page letter entitled, "Reporters' Views on the Beat Adjustments" dated June 5, 2001, respecting which she asserted: "Every reporter got a chance to read it and approve it." The letter, in detail with numerous references to individual named reporters' preferences, addressed the question of beat assignments and made various proposals. Wang faxed the letter to Horng. The result of the letter was that the editor-in-chief called a noon meeting on June 6, 2001 for reporters at the Corporate Center.

The meeting was held at the scheduled time and place and was attended by Editor-in-Chief Chen, City Editor Horng, and the bulk of the reporters. Wang testified that Editor-in-Chief Chen asserted that since he was not of a common mind about all the various beat assignments, he could not believe that the reporters had reached a consensus as reflected in the submitted letter. He told the reporters that if he as the editor-in-chief did not accept their proposals for changes, other than giving up their employment, "what can you guys do?" Wang recalled he added: "If you have any opinion you have to come into the office to express your opinion. Don't do something out of the company system." And he added that the beats would remain as they had been assigned.

> Wang described what then occurred:
> The reporter, Sunny Yen, asked a question. Jeff Horng said to him three or five reporters together cannot talk about the company and he asked Jeff Horng again, you say that to me, what you mean, why reporter cannot meet outside the company to talk about the beat? Jeff Horng said, it is not proper to do that, he say, if you guys want to meet out of the company you have to have me, that means Jeff Horng, in the meeting. If you think—that means Jeff Horng—is there that you cannot say whatever you want to say you have to report to me immediately. He say, if it is a union meeting he does not know, but he thinks we don't have a union.

Wang's Board-prepared affidavit covered the event:

> Horng said if three or five reporters are discussing matters related to the company then he should be present or else the result of meeting should be reported to him immediately. Horng said if we had any questions we should speak to him directly and there is no need to speak about it among ourselves.

Hsiao Chao had not met with other reporters regarding the beat assignment changes nor seen the letter submitted by Wang, but she did attend the June 6, 2001 meeting. She described the relevant portions of the meeting as follows:

> Chief Editor Chen talked about and prepared a letter the beats. So he told all of us that the reporters should -- I forgot his exact words. Should have independent thinking and we shouldn't be influenced by Lynne [Wang]. . . . He said that reporters—it is not appropriate for reporters to meet outside the company on their own talking about business related issues. . . . He said that you don't have a Union yet, so you cannot get together like that. Since you don't have a Union, Lynne shouldn't regard herself as a shop steward. . . . City Editor Jeff Horng added in. He said that because—well, after Chief Editor Chen said that the reporter, Sunny Yen, who came from mainland China, she sat and spoke at the meetings, but she suddenly raised a question. She said that she was from mainland China and she thought that in the United States was where people had freedom of speech and freedom of assembly and why Chief Editor said we couldn't all get together, the reporters couldn't get together.
>
> Q. And did anyone respond to that?
>
> A. Then City Editor Jeff Horng, he added that reporters are not allowed to get together and talk about the company related issues. So next time if you have this kind of meeting, you have to let me know immediately. You cannot have these meetings without—that's what he said. You cannot have these meetings without me being there.

Editor-in-Chief Chen was asked to describe Horng's statements to employees at this meeting regarding any limit on their right to meet together. He recalled:

> [City Editor] Horng said during meetings, if you want to discuss about the beat, I should attend also because the beat change within my supervising authorities. Therefore, you know, get involve in the meeting so we can, you know, communicate directly with each other and that the beat, it belong to the newspaper. You cannot, you know, negotiation in private between the reporter because that the newspaper—okay—the newspaper have the overall

considerations when to distribute the beat and to have a certain balance.

Q. Did Jeff [Horng] tell the reporters that they were not allowed to discuss work issues unless he was present?

A. No, he did not say that. Well, in the United States, free country. You can discuss whatever you want to discuss.

City Editor Horng testified that Wang took the position during the meeting that she was the spokesman for the employees and that management told her that she was not. Regarding the issue of his presence during employee deliberations he testified:

Well, I told them that I hope that this will be in the public—which it will be a public occasion—open meeting—occasion that I will attend also because my thinking, I believe, this is a constructive change and—oh, interact.

Q. Did you direct the reporters that they were not to meet outside your presence to discuss working conditions?

A. What I meant was—

MS. SILVERMAN: Objection.

JUDGE ANDERSON: Can you tell us what you said, sir, rather than what you meant?

A. I said, of course, you may go ahead and hold the meeting but during the working time and discuss about the beat, I hope that I can participate because my point is that I want to communicate direct.

Q. Did you tell reporters that they were not to have any meetings about the beats unless you were present?

A. No.

In a communication dated, June 30, 2001, from Wang to Horng and Chen, Wang again addressed beat issues and asserted in part:

On June 4, Assistant Editor-in-Chief Horng expressed displeasure at the reporters' meeting, and requested that from then on no private meetings be allowed. Meetings had to have him present or he had to be informed first right after the meeting.

Editor-in-Chief Chen responded by communication of July 16, 2001, stating in part:

When you spoke to City Editor Horng at the meeting, your views contained some misunderstandings and twisted interpretations. City Editor Horng understands that our fellow reporters have the right to assemble and discuss this newspaper's affairs. However the true intent of what he said at the June 4 meeting was that as far as the news coverage term is concerned, the most congenial and constructive method would be to have everyone directly exchange ideas with the supervisors to discuss the problems. If coworkers have no opportunity to express their views for themselves, it will be very easy for misunderstandings to arise, or to me misled and incited by people with ulterior motives. It will be easy for them to feel that they are not been respected or valued. That is why City Editor Horng encourages our and other colleagues to give your reactions directly to your supervisors and discuss problems. It is not necessary to have someone else to pass on one's words. City Editor Horng and myself emphasized again and again at the meeting that day what we meant by this and we believe that everyone at the meeting heard this very clearly.

(2) Analysis and conclusions

The counsel for the General Counsel argues that her witnesses should be credited and that Horng at the meeting clearly restricted the employees' right to meet among themselves outside his presence to discuss beat assignments. Counsel for the General Counsel notes that freedom to assemble and discuss terms and conditions of employment free from employer presence lies at the heart of the Act and that employer rules prohibiting employee discussions of working conditions outside of the presence of supervision violates Section 8(a)(1) of the Act citing *Koronis Parts, Inc.*, 324 NLRB 675, 694 (1997).

The Respondent does not challenge the General Counsel's legal theory so much as argue that there is no credible factual basis in the record to sustain it. Thus, the Respondent argues that the actual statements made at the meeting tracked the recitation of Editor-in-Chief Chen's memo quoted in relevant part above.

I have carefully considered the testimony of the meeting participants as well as the content of the affidavit of Wang and the exchanged communications of Wang and Chen. In addition to considering the interpretation and credibility resolution each side advances, I have considered whether a miscommunication or variant understanding of words occurred. I find and conclude that the statements of Horng are as described by Wang and Chao above. I found their memories of what was said confident and their presentation direct and complete. Rather, with Chen and Horng, I found the two did not provide a full or convincing recollection of what was said. Regarding the written evidence, that prepared by Wang was consistent with her testimony. Editor-in-Chief Chen's subsequent communication, as quoted above, sounds more in the cadences and content of a counseled position rather than a reiteration of remembered events and statements. I find that the testimony of Editor-in-Chief Chen and City Editor Horng denying the remarks attributed to Horng are equally unworthy of reliance and discredit them to the extent they are inconsistent with Wang and Chao.

Critical to my resolution is the questioning at the meeting by reporter Sunny Yen as described by Chao and Wang. I do not believe this detail of the testimony would have been fabricated to enhance the believability of the witnesses' description of the meeting. Yet, the question presented by Yen, which I find was asked at the meeting, makes it clear that at least Yen believed that the Respondent's agents were announcing rules and restrictions on the employees' rights of assembly. This element both supports and augments my findings above.

Given these credibility resolutions, I find the counsel for General Counsel has met her burden of proof of showing that the Respondent in this meeting wrongfully limited the employees' right to meet apart from supervision in the discussion of working conditions. This conduct violates Section 8(a)(1) for the reasons given above. I therefore sustain the General Counsel's complaint paragraph 10.

d. Complaint paragraph 11 - The June 6, 2001 memorandum

Complaint paragraph 11 alleges that on or about June 6, 2001, the Respondent, at the Corporate Center facility, by memorandum distributed to employees, threatened employees with job loss because of their support for or selection of the Union as their bargaining representative.

(1) Evidence

Technological change seems to occur at an ever increasing rate. I administratively notice that for many years technological change has been profound in the printing trades and in newspaper preparation and printing historically and that such change continues apace in the current computer age. The United Daily News Group and its constituent newspapers including Respondent have not been immune to this process. In the United Daily News monthly publication dated February 2001 and distributed to the Respondent's employees in the February-March period of 2001, an article noted that new technology, CTP,[5] allowed for essentially computer-driven paperless preparation of the newspaper from writing through editing into pre-printing with concomitant saving of labor.

The translated article asserted, "[N]ewspapers all over the world already starting doing this, so we [have] already started the planning stage to agree to bring this technology in." The article quoted United Daily News Group leadership as hoping to implement the new technology over a 3-year period with an initial result cognizable in 2003.

The record also makes clear that at relevant times the Respondent's employees were in various degrees aware of the potential of new technology implementation to reduce the number of unit jobs at the newspaper and to change the work of other unit employees. They were also aware of, and at least a few had discussed with supervision, the fact that the United Daily News Group and the Respondent were actively considering such changes and their costs and ramifications.

On or just after June 6, 2001, during the course of the hearing on objections to the election, the Respondent issued a memorandum to employees dated June 6, 2001, entitled: "Let the Truth Speak Out"[6] noted as from "the President's Office." The memo, in Chinese, covered various topics including improvements in health insurance coverage, technological change in the newspaper industry, and the plans of the United Daily News Group and the Respondent respecting the changes. The new "CTP" technology was discussed.

The CTP technology was explained in some detail. The fact that implementation would reduce staffing requirements for editing, news coverage and printing was explicitly mentioned. The memorandum noted that employees have expressed concerns that jobs would be eliminated and or simplified. The memo stated that in regards to the Respondent's implementation of technological changes it wished to inform the employee of several matters. The memo then presented four numbered paragraphs. The first indicated that the implementation of technological changes was under study and that change could not simply be resisted.

The second paragraph of the four, in the Respondent's submitted translation, states:

> No. 2, history and actual data have told us that the cost of running an enterprise that has [a] labor union increase[s] significantly. In order to take protective measures in advance and to take precautions against a calamity, the Newspaper Agency must consider all options and alternatives, from various cost-cutting measures to enhancement of efficiency, with the objectives of maintaining the survivability of the enterprise as well as protecting the vested interests of the staff.

The third numbered paragraph states that various technology implementation plans were under consideration and their strengths and weaknesses were being evaluated. The memo recited that no decision had as yet been taken and no conclusions could as yet be reached. The fourth numbered paragraph urged employees to continue to work with peace of mind and assured employees that the United News Publisher would consider its technology choices with fairness, sensibility, and the interests of all in mind.

The final two paragraphs in summing up included the admonition: "Only the Newspaper Agency can give our colleagues more welfare and benefit. It has always been like that in the past without a labor union."[7]

Editor Pao testified that based on his long experience in the newspaper industry, he believed that if the CTP technology being considered were fully implemented at the Respondent, as many as 30 unit jobs would be lost.

(2) Analysis and conclusion

Counsel for the General Counsel describes the standard to be applied to the Respondent's communication with employees:

> An employer is entitled to communicate with its employees about unionization so long as the communication does not

[5] CTP is an acronym for "Computer to Plate." CTP is a description of the intermediate stages of newspaper publishing from the written article in the reporter's computer to the completion of the printing plates which are used to physically print the paper. Thus, the phrase is shorthand for the various intermediate stages in the preparation of the newspaper starting from the written articles through editing, proofing, formatting, and the subsequent preprint processing. More importantly it is also reference to the new technology which provides for automation or computerization of these steps with important and potentially far reaching consequences for the type and location of newspaper preparation work done and the number of unit employees employed to do such work.

[6] The Respondent during relevant times distributed occasional letters or memoranda to employees under the title "Let the Truth Speak Out" presenting the Respondent's views on various matters relevant to the organizational campaign and subsequent employee union activities. All these communications were written in Chinese only.

The memorandum was offered into evidence initially with three separate English language translations. That number was thereafter reduced to two: one submitted by the General Counsel and one by the Respondent. The General Counsel and the Respondent were unable to agree upon a single translation and concluded that a translation from each would be put in evidence and they would argue any substantive differences on brief.

[7] The quoted language is from the Respondent's translation. The General Counsel and Charging Party's version states: 'We do not need the union—we have never needed it."

> contain threats of reprisal which might reasonably tend to restrain and coerce employees in the exercise of their rights under the Act." (GC brief at 95.)

Counsel for the General Counsel further argues on brief that the conduct at issue was undertaken during the course of objection hearings. She argues:

> In promulgating and distributing a memo linking automation and job loss with union organizing, the Respondent went beyond the bounds of permissible free speech. (GC brief at 95.)

The General Counsel asserts that the Respondent told employees that it was investigating the feasibility of the technological changes at its plant, asserting that change was necessary to stay competitive, and then asserted that when a company is unionized, costs increase so money must be saved. Counsel for the General Counsel argues:

> Thus the implication is that the Respondent would be forced to cut expenses by instituting CTP and laying off employees if the Union were certified. The Respondent then brought this message home reiterating that only the company can provide benefits so long as the employees remained "reasonable", and repeated that the company does not need a Union. (GC brief at 96.)

The technological changes in the industry were fairly described and discussed by the Respondent's written material and the Respondent was clearly and correctly describing the possible implementation of the technology at the newspaper. The Respondent also made it clear the technology was still being assessed. The Respondent notes not only the accuracy of its statements but argues: "This is the precise type of speech which Section 8(c) [of the Act] must protect." (R. Br. at 32.)

There is no doubt that an employer is entitled to truthfully explain circumstances which may have an impact in the future on the employer and on employees. The government here argues that when the Respondent seemingly linked union-caused increases in the cost of running a business with its consideration of "protective measures" such as job-eliminating technological implementation over which it has total control, employees would reasonably perceive the statements as a threat. The Respondent characterizes the communication simply as explanation and prediction not threat.

As in fact occurred among the Respondent's employees, employees generally would reasonably be concerned that the Respondent might well undertake its self-described "protective measures" and "precautions against a calamity" by considering alternatives including technological changes if employees were represented by a labor organization. The words used by the Respondent quoted here foreshadow precautionary actions. Thus I find the Respondent's communication reasonably would be perceived by employees as portending adverse consequences if the Respondent's employees were organized.

The issue in this aspect of the case is distinguishing permissible predictions for impermissible threats as established by the Court in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). The Court noted at 395 U.S. 618:

> A prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control. [citation omitted]. . . . If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment.

Here the Respondent has not based the picture it paints of possible job elimination on demonstrably probable consequences. first, the Respondent based its prediction of increased costs on "history and actual data" when costs at such a macro level are largely within the control of the employer. Second and importantly here, the Respondent states that the actions it may take regarding technological change will be "protective measures" taken "in advance . . . precautions against a calamity." This statement describes ominously a process of decision-making and events entirely within the Respondent's control and not dependent on economic circumstances but in anticipation of unionization.

Given the record as a whole and the communications at issue in the broader context of the election campaign and the matters in contest herein, and guided by the teaching of *Gissel* and its progeny, I find that the Respondent's statements at noted above were reasonably perceived by employees at threats and that they were not permissible predictions sheltered by Section 8(c) of the Act. I find therefore that the General Counsel has sustained paragraph 11 of the complaint.

Complaint paragraph 12 alleges that the Respondent, at the Corporate Center facility, posted and maintained at a location near an employee's work station memoranda disparaging, criticizing and personally attacking the employee because of the employee's union and protected concerted activities.

There is no dispute that the Respondent distributed copies of two issues of "Let the Truth Speak Out" communications in September 2001. Copies of these two issues were posted in the Respondent's reporters' area on the periphery of the bulletin board along with other "overflow" documents near the work station used by employee Lien Wang.

In a rejoinder to prior Union communications to employees, one of the posted September issues of the "Let the Truth Speak Out" addressed various matters. It asserted in part:

> Even though the union has not received any legal status, news reporter Wang Lien Yi and other union supporters are still continuing their suit against the newspaper before the Labor Commission [NLRB]. The latest example is a 23-charge suit groundlessly charging Assistant General Manager Wang Wen Shan, Bureau Chief Sue Min Sheng, Editor-in Chief Chen Shi Yao, and Assistant Editor-In-Chief and Newsroom Chief Jin Fue, all from the United Daily news. Did the union supporters hope that the newspaper would "surrender:, sit down and be shot, and admit to these fabricated accusations? If we are convinced that contention under law is the best way to protect one's rights, we must hire the best attorney and consultants to protest our interest and future.

The other posted September issue of "Let the Truth Speak Out" also discussed charges against the "Newspaper", the fact that news reporter Wang Lien Yi had filed charges with the Labor Commission [NLRB] and argued that the newspaper was innocent of all the allegations against it. The issue challenged the good faith of the various charges of the Union and suggested that news reporter Wang rather than being a victim of the Newspaper is protected by the Union. The issue generally defended the good faith of the Newspaper and asserted the Union was not reasonable or acting in the employees' interest. It concluded with the hope and exhortation that the employees should "usher out the union from the newspaper."

Ms. Wang testified that the posting occurred when she was out on sick leave and that on her return they were in place as described above and remained posted for about a year. She heard from other employees that they mentioned her name and that she became uncomfortable using the computer in the area.

The General Counsel argues that the postings were the responsibility of the Respondent and were publicly humiliating to Wang. The General Counsel asserts that the content and location of the postings taken together had the reasonable effect of restraining and coercing Wang, as well as the other employees, who saw them posted so near to Wang. No cases were cited in support of the proposition, however.

The Respondent asserts that the posting was undertaken by an unknown person. Treating the complaint allegation as a per se attack on the language of the letters, the Respondent cites cases for the proposition that they do not violate Section 8(a)(1) of the Act.

I do not take the General Counsel's theory of a violation as including the argument that the documents posted were violative because of their content. Rather I find that the government is arguing that the otherwise not illegal letters when posted and maintained next to Wang's work area were a humiliation that violated Section 8(a)(1) of the Act. Without supporting authority, I am unable to find that the posting of the two documents, not in and of themselves alleged to violate the Act, near Wang's work area rises to the level of a violation of the Act. Further the record does not identify the poster nor is there evidence that Wang or anyone else complained about the posting or sought removal of the documents. Thus there is no evidence other than the simple posting of the documents to connect the Respondent to an effort to humiliate Wang. Given all the above I find and conclude that the General Counsel has not sustained his burden of proof with respect to complaint paragraph 12 and I shall therefore dismiss it.

f. Complaint paragraph 13 — The June 5, 2002 memorandum

Complaint paragraph 13 alleges that Horng, by written memorandum, threatened an employee with unspecified reprisals for engaging in union and protected concerted activities.

On April 12, 2002, the first anniversary of the representation election, the Union held a press conference outside the Respondent's facility. The event included attending Union and elected officials as well as media coverage. Wang spoke at the gathering, encouraged employee support for the Union, and viewed with alarm and disapproval the Respondent's activities in opposition. She described her remarks at the gathering:

> I say I think people show support for us and I say we are proud to be a member of the newspaper, so many years we are the voice of the community. We advocate all the human rights, people's rights, civil rights, labor rights, all kind of rights for this community. We believe that the union is a good tool to make the company more prosperous I also mention about after we won the election the company fired union supporters, publicly humiliate those union supporters and keep us scared. So why it is so important for those community members to come and support us, and tell those people in the building behind us to support a union.

During cross-examination she added that she also said that the Respondent: "abused the legal system and fired Union supporters and the Company humiliated them." She denied making any reference to a specific number of employees fired or naming any, although she testified she had Mr. Chen in mind during her remarks. The Respondent's agents did not attend the event but thereafter received reports of what had transpired.

On or about June 5, 2002, at a reporters' meeting, Wang received a letter from City Editor Horng dated June 1, 2002, captioned: "False and Misleading Statement.' The letter states in part:

> In an April 12, 2002, press conference you made several statements which are misleading and in some respects completely untrue.
>
> You accused the [Respondent] of wrongfully terminating two reporters and someone from the factory. Your accusation does not take account of the real facts and sheds an unwarranted negative light on the [Respondent] as well as your own credibility as a reporter
>
> . . . .
>
> Your job as a reporter requires you to get all sides of a story and to report accurately and in a balanced fashion what you find. Your April 12 comments reflect fundamental problems in your skill as a reporter. If you did not check your facts before you spoke, you should have. If you knew what you said was false or misleading before you spoke, you should not have said it.
>
> We trust that you will be more accurate in the future in your research and your statements. You have legal rights to support a union and to express your opinion. However, also consistent with the law, you should expect to be held accountable for any damage which your false or misleading statements cause the [Respondent].

The omitted portion of the letter quoted above deals with the Respondent's disagreement with claimed statements made by Wang at the April 12 event respecting the termination of several employees whom she named: Jen Chen, Sunny Yen, and William Chen.

The General Counsel argues that Wang's statements at the union event were clearly union activities and they did not deal with any type of product disparagement which would cause her remarks to lose the protection of the Act. The General Counsel further argues that the Respondent's letter contains a clear if nonspecific threat, i.e., to hold Wang "accountable" for any

"false and misleading statements" made by her "in the future." Counsel for the General Counsel argues, on brief at 90:

> The warning issued by Respondent would reasonably have a chilling effect on Wang's statutorily protected activates, and was so broadly worded that an employee would likely be concerned that any criticism of Respondent to any person would be considered defamatory and, accordingly, a possible basis for future discipline. Thus, in the absence of any other rational for the issuance of this warning, it must be concluded that Respondent intended to restrain and coerce Wang in her role as the union's spokesperson.

Thus, the General Counsel argues that the Respondent's threat must be held to violate Section 8(a)(1) of the Act.

The Respondent suggests a'similar allegation in *Sea Mar Community Health Center*, 345 NLRB No. 69 (2004), has been rejected by the Board. Counsel for the Respondent further argues on brief at 26:

> The allegation lacks merit and should be dismissed absent withdrawal. A failure to do so would compromise the [Respondent's] legal rights to employ truthful reporters, to explain and cure potentially false and damaging communications, and to confirm intentions to follow the law. This would strike at the heart of the [Respondent's] reporting and business operations which rely on the credibility of the [Respondent's] reporters and their accurate recitation of fact."

At the threshold, I find Ms. Wang's remarks at the press conference were union activities. Further in agreement with the General Counsel I find the Board's line of cases respecting "loyalty" are distinguishable. See *NLRB v. Electrical Workers Local 1229 IBEW (Jefferson Standard)*, 346 U.S. 464, 472 (1953). The statements involved herein deal with the Respondent's labor relations and unfair labor practices.

Further, I find in agreement with the General Counsel that the letter to Wang contains a threat to her based on what she might say "in the future". By its terms, the letter states that if Wang makes statements in the future during union events about the Respondent's labor relations which are "false or misleading" then she will "be held accountable for any damage which your false or misleading statements cause the [Respondent]." Under conventional analysis there is no question that such conduct violates Section 8(a)(1) of the Act.

The Respondent, however, raises an important recent Board case addressing a business justification respecting newspaper reporters which can rise to the level of a defense to a violation of Section 8(a)(1) for chilling employee protected concerted or union activities. *Sea Mar Community Health Center*, 345 NLRB No. 69 (2004). It is appropriate to consider that case in some detail. In *California Newspapers*, a reporter and bargaining unit member approached a local city council member seeking support for the union in negotiations with the newspaper. The newspaper through its agents Voros and Stafforini met with the reporter, Anderson. The Board described the exchange at 345 NLRB No. 69, slip op. at 1:

> They told Anderson that they were concerned about the appearance of a conflict of interest because Anderson had gone before the city council to ask for a favor, when Anderson might be reporting about the city or city council, and in fact had written a story that involved city sources and was about city government. Voros and Stafforini told Anderson that they felt some-one else should have spoken to the council instead of Anderson. They explained the importance of protecting the integrity and credibility of the paper. They emphasized, however, that Anderson had the right to engage in union activity. They told Anderson that their concerns were unrelated to the fact that Anderson's remarks to the city council had been about the Union. At the end of the discussion, Voros reaffirmed that Anderson was a valued employee. Anderson was not disciplined.

The Board found, reversing the administrative law judge, that while the activity of the reporter was protected, and assuming that the employer conduct interfered with Section 7 rights, the employer had demonstrated a legitimate and substantial business justification that outweighs the adverse effect on Section 7 rights. They stated at 345 NLRB No. 69, slip op. at 2:

> The Respondent has a legitimate interest in protecting its newspaper against the appearance of conflicts of interest that could damage the paper's credibility. As the District of Columbia Circuit has stated,
>
> > [P]rotection of the editorial integrity of a newspaper lies at the core of publishing control. In a very real sense, that characteristic is to a newspaper or magazine what machinery is to a manufacturer. At least with respect to most news publications, credibility is essential to [a publisher's] ultimate product and to the conduct of the enterprise. *Newspaper Guild Local 10 (Peerless Publications) v. NLRB*, 636 F.2d 550, 560 (D.C. Cir. 1980).

In the instant case the Respondent argues, not the protection of its newspaper against the appearance of conflicts of interest that could damage the paper's credibility, but rather protection against the appearance that its reporter was not credible. Thus, the Respondent seems to argue, as it stated in its letter to Wang:

> Your job as a reporter requires you to get all sides of a story and to report accurately and in a balanced fashion what you find. When a reporter fails that, even if this occurs when acting as the Union spokesperson on her own time at a press conference held by the Union, the Respondent is entitled to warn the reporter that that she would be "held accountable" for any future unbalanced conduct which "sheds an unwarranted negative light on the [Respondent] as well as your own credibility as a reporter."

I do not read *Sea Mar Community Health Center* as broadly as the Respondent. The Board in *Sea Mar Community Health Center* emphasized that the employer went out of its way to make it clear that union activities was not the issue and that no discipline was imposed. In the instant case, if the Respondent were correct, no reporter could ever serve as an advocate for a union attempting to organize employees in any public forum since such a position does not involve reporting "all sides of the story" in a "balanced fashion". If the Respondent could require such professional neutrality in public statements by those of its employees who were advocates for the Union, the employees' advocacy would be neutralized. If reporters could be punished

for such advocacy, their union activities would quickly be chilled to cessation. The Board simply did not go so far in *Sea Mar Community Health Center*. Rather I find, for the reasons given, that the Respondent may not rely on *Sea Mar Community Health Center* to justify its conduct herein.

Moreover, I find that the true reason for the letter was not the Respondent's unhappiness with Wang's credibility, but rather with her representations which, as the letter notes, sheds a negative light on the Respondent. This unhappiness with labor organization advocates' statements is not unique to the newspaper industry or this employer. Further the employer may not prevent such partisan even unbalanced rhetoric through warnings or discipline. To do so violates Section 8(a)(1) of the Act. I so find here. I therefore sustain the General Counsel's complaint paragraph 13.

g. Complaint paragraph 14 - The July 26, 2002 memorandum

(1) Evidence

Complaint paragraph 14 alleges that the Respondent by Editor-in-Chief Chen and President Su, in a written memorandum distributed to employees, threatened an employee with unspecified reprisals for engaging in union and protected concerted activities.

The Respondent regularly conducts monthly management meetings and minutes of those meetings are distributed to management. In the minutes of the July 2002 meeting, Editor-in-Chief Chen and President Su had comments attributed to them respecting the union activities of employee Yun-Min Pao. The minutes stated in part:

> From Chief Editor Mr. Chen
>
> I was on vacation on July 19, so colleagues told me that editor, Yun-Min Pao who is very active on organizing union passed out so-called "Union Newsletter" at 2:30 AM on that day. Although Mr. Pao had already turned in his edited pages and was off work, the law run of paper printing had not yet started, and many other colleagues and managers were still on duty in the office. Overall, it is neither non-working hour, nor break time, so Mr. Pao's action might be illegal.
>
> Besides passing out union newsletter, Mr. Pao had a similar action few months ago. I think these actions might be against labor laws or related laws because he tried to organize union during office hours, disturbed other colleagues' working, or affected the office order. We should inform the consultant based on these facts to see whether Mr. Pao's behavior is legal or not and take necessary actions. We don't want few colleagues to think they can do whatever they want without fear, harm the office atmosphere, and influence other supporting colleagues' viewpoints toward the newspaper.
>
> From the chairman of the meeting, President Su:
>
> Conclusion and Summary of the meeting:
>
> Editor Yun-min Pao, active on organizing union, repeatedly passed out union newsletter during working hours in the office. Is what he did against USA Labor Laws or related laws? Please review and check actual facts to present the consultant and attorney for study and action.

No action was ever taken against Pao for the actions discussed in the minutes.

Monthly management meeting notes had not been distributed to employees nor posted for many years, nor throughout the years of Editor-in-Chief Chen's appointment. They were reguarly distributed to managers including Teu Cheng Chu, the director of editing and Editor Yun-Min Pao's supervisor.

Yun-Min Pao testified that when he came into work a copy of the Chinese-language original of the monthly management meeting minutes, translated excerpts of which are quoted above, were on his supervisor, Teu Cheng Chu's, desk. He testified that they were left there regularly and he had read them on many occasions. Further, he testified he believed his fellow employees read them as well and, testifying about the entire original Chinese-language document which was not offered into evidence, testified that in the upper right-hand corner of the first page of the minutes it stated they were distributed to coworkers. He testified further that other copies of the minutes from other management meetings were also so marked,[8] he had personally observed other employees reading those notes and that his supervisor, Teu Cheng Chu, had on occasion observed his reading of the management meeting minutes on the director of editing's desk.

Pao testified that after reading the notes, part of which are quoted above, he took them and copied them, retaining the copy he made and returning the original to Teu Cheng Chu's desk—all before Chu had arrived to work. Pao did not assert that he had ever received permission or authority to copy or retain management meeting minutes.

Teu Cheng Chu testified that he obtained a complete set of minutes of the monthly management meeting, part of which is quoted above, at a management meeting. While he did not specifically recall the particular document, he testified that without exception he put management meeting minutes in his desk and did not leave them on his desk or otherwise available for employee view. Further he testified he never distributed such minutes nor authorized employees to read them or remove them from his desk. Both President Su and Editor-in-Chief Chen testified that the management meeting minutes were confidential, contained confidential information and were never passed out to employees or posted.

(2) Analysis and conclusions

The General Counsel does not allege that the minutes at issue or the statements made in the meeting minutes described violate the Act. Those events were between and among members of the Respondent's management team. Rather, the General Counsel contends that the Respondent deliberately left the minutes out where Pao could read them and by that action the Respondent violated Pao's Section 7 rights.

The Respondent challenges the factual basis of the General Counsel's theory asserting first that the Respondent did not in fact make the notes available to Pao. Rather the Respondent contends that Pao engaged in the unprotected acts of pilfering and

[8] He identified the wording in another minute in its upper right-hand corner as: "Please Distribute It To The Employees Of All Departments."

wrongfully copying the confidential management minutes. Thus the Respondent argues it not only did not intend or allow Pao to have access to the notes, his unprotected act of acquisition further insulates the Respondent against any finding of a violation.

I credit President Su and Editor-in-Chief Chen that they regarded the management meetings and the minutes of the meetings to be confidential and I further credit them that they did not believe they were being read by employees. I also credit Pao however that he took the notes to be non-confidential in part because they were designated on their face as to be distributed to employees.[9] The testimony of Messrs. Pao and Teu Cheng Chu are at variance regarding their habit and custom concerning the minutes and regarding Pao's access to the memos generally. I find it unnecessary to resolve that conflict. I reach this conclusion because I find that crediting either individual does not turn my conclusions respecting the allegation.

I find and conclude that on the undisputed facts, the Respondent did not violate the Act when Pao read the contents of the minute. Given that the meeting that the minutes describe is not under challenge, a violation would have occurred if and only if the Respondent knowingly or recklessly published the memorandum to Pao. Here, neither of the agents who are accused of the violation: President Su and Editor-in-Chief Chen, had knowledge or even suspicion that the minutes of the meeting would come to be read by Pao. Indeed, Teu Cheng Chu could not have had such knowledge since the minutes were read by Pao before Teu Cheng Chu arrived at
work that day.

Even if Teu Cheng Chu knew generally that Pao often read such minutes, the General Counsel by that fact has not sustained the complaint allegation that the minutes were "distributed to employees". I simply find that the totality of circumstances regarding the custody and control of the minutes was such that the Respondent may not be held to have acted so unreasonably that it could be charged with in effect publishing the minutes to Pao. Thus, I do not find in the entire context of events, that the Respondent by its conduct improperly threatened Pao when he read the minutes. This being so, it is not necessary to consider or determine whether or not, even if the Respondent could be charged with such a publication, that the Act was thereby violated.

I find therefore that the General Counsel has not sustained his burden of proof that the Respondent violated the Act as alleged in paragraph 14 of the complaint and that paragraph shall be dismissed.

h. Complaint paragraph 15 - Printing Supervisor Huang Fan-Chiang solicitation in November 2002

Complaint paragraph 15 alleges that about November 2002, Huang Fan-Chiang, in the employee lounge of the Corporate Center facility, solicited employees to sign an anti-union petition.

Chih-Ming Sheu is a long-term employee of the Respondent working as a printer on the nightshift. His immediate supervisor is Print Group Leader Huang Fan-Chiang, an admitted statutory supervisor. Sheu was an early and well known union supporter. He testified that at the end of November 2002, he heard about, but had as yet not seen, an anti-union petition that employees were being asked to sign. At around midnight, he was in the employee lounge alone with his supervisor Huang Fan-Chiang. Fan-Chiang told Sheu that he was the only employee that had not signed the petition and that he had to go "upstairs", i.e. to the president's office, to sign the petition.

Sheu testified he told Fan-Chiang he would not sign the petition, that his support of the Union was a personal decision and as long as he did his work for the employer "that's it." In response Fan-Chiang told him, in Sheu's memory:

> Mr. Fan said, because I said I'm not going to sign it, this piece of paper, he said if I don't sign this petition he will tell the upper management that he couldn't not find me.

Sheu gave the Regional office an affidavit describing the same events. It recites a conversation with Fan-Chiang in the lounge in which Fan-Chiang informs him that he is the only employee left who did not sign the petition and that Sheu told him he would not sign the petition. The affidavit recites that Fan-Chiang replied that if Sheu would not sign the petition he would tell management that he was unable to find Sheu and therefore had not asked Sheu to sign the petition. It also states: "Fan-Chiang never asked me to go to the "third floor" or to President Su's office to sign the petition, since he already knew that I am pro-Union." Shown his affidavit, Mr. Sheu reiterated that he was in fact asked to go to the third floor offices by Fan-Chiang.

Fan-Chiang testified respecting these events. He recalled that he had earlier heard about the anti-union petition and seen employees signing it, but had not read it himself. He specifically denied asking any employees to sign the petition. Rather he asserted that when learning the nature of what the employees were signing, he withdrew telling them he would not be involved. He did not recall a midnight lounge conversation with Sheu. He categorically denied asking Sheu to go upstairs to sign the petition; he denied telling Sheu that he was the only one who had not signed the petition and he denied telling Sheu that because he would not sign the petition, Fan-Ching would tell management that he had been unable to locate Sheu. He asserted that he would not ask Sheu to sign an anti-union petition since he well knew that Sheu was a strong supporter of the Union.

The General Counsel argues that Sheu should be credited and, based on that credited testimony, it should be found that the Respondent's admitted agent and supervisor, Fan-Chiang, violated the Act by soliciting Sheu to sign the petition. The Respondent argues to the contrary that Fan-Chiang should be credited and no solicitation found to have occurred. Further, argues the Respondent, even should Sheu be credited, the statements made were innocuous and do not support a finding that the Act was violated.

I have considered the testimony of Sheu and Fan-Chiang in light of the record as a whole and their demeanor. I find, credit-

[9] Only the excerpted portions of the minutes were offered into evidence, and those minutes were offered in English translation only. But Pao, with the original Chinese minutes before him, testified without objection that the document bore the notation described.

ing Sheu, there was a meeting of the two men and that the petition was discussed. Were it necessary to resolve this disputed allegation, I might well credit Sheu further and find that Fan-Chiang did in fact tell him that Sheu was the only one who had not signed the petition and that Fan-Chiang would simply tell higher management that he could not locate Fan-Chiang. But I cannot credit Sheu's testimony that he was asked by Fan-Chiang to sign the petition. Sheu's testimony in this regard is importantly impeached by his own affidavit. And, as the Respondent argues, Fan-Chiang asserted, and logic supports, Sheu's strong and open support for the Union made such a solicitation by Fan-Chiang, who knew he was a strong union supporter, improbable.

Given this important credibility resolution, I find the General Counsel has failed to meet his burden of proof that the Respondent, through Fan-Chiang, solicited Sheu to sign an antiunion petition. Having reached that conclusion, it is unnecessary to resolve the remainder of the disputed events because, under all versions of those events, absent such solicitation, the Respondent has not violated the Act as alleged. The General Counsel's complaint paragraph 15 is therefore without merit and will be dismissed.

i. Complaint paragraph 16 — January 2003 Ming Chiang interrogation

Complaint paragraph 16 alleges that on or about January 2003, the Respondent through Ming Chiang, in a telephone conversation, interrogated an employee about the employee's union and/or protected concerted activities, and the union and/or protected activities of other employees.

The Respondent's truckdrivers are in the Circulation Department. The drivers had not had a foreman until 2002. In October 2002 Mr. Ming Chiang was hired and came to be foreman[10]. For various reasons, driver employees were unhappy with Mr. Chiang as foreman and came to prepare and submit to the Respondent a group communication. The communication, dated January 24, 2003, written in Chinese, bore the signatures of 9 of the approximately 16 drivers. It stated in part:

> Request position of circulation department forman to be selected by direct election of drivers. Election to be held once a year and can be reelected unlimited times. Explanation:
>
> - Last year (2002) Chinese Daily News
>
> held direct election for forman;
>
> - Current forman not same selected by direct election;
> - Drivers feel deeply for democratic process and violates the intention of the drivers
>
> We join together to make request according to the above method to select forman.

[10] The Respondent admitted Mr. Ming Chiang to be a supervisor within the meaning of Sec. 2(11) of the Act.

Mr. Chao Chan Kan, a truck driver in the Circulation Department, testified regarding events following the submission of this letter:

> After—about two or three days after the letter has been submitted and [Ming Chiang] call me up.I was at home. He asked me whether that the driver had joined together and signed a letter to send to the management. I say yes.
>
> Q. And what did he say?
>
> A. Who is the leader?"
>
> Q. And did you answer him? A. I said, "I won't tell you."

The General Counsel argues that the credible, uncontested testimony should be credited and the interrogation found to violate Section 8(a)(1) of the Act. Counsel for the General Counsel notes the interrogator was the very person against whom the protected concerted complaints were directed and that no assurances or justification accompanied the questioning.

The Respondent argues on brief at 43:

> Ming Chiang is no longer employed at the CDN and was not called as a witness. The alleged interrogation is a de minimus isolated instances in these circumstances since the petition was signed and it was common knowledge that Jeffrey Sun wrote the petition and was the leader.

I find the General Counsel's argument persuasive. Mr. Kan's testimony was credible and Mr. Chiang did not testify. An interrogation directed to identification to the employee "leader" of a protected concerted protest or other communication directed to management is impermissible. Such an inquiry makes it clear to employees that management wants to identify the "leader" and therefore finds it relevant to do so. Employees may reasonably perceive the relevance of that knowledge is for the purpose of the employer taking action against the leader. When a Respondent agent making the inquiry is the subject of the employee concerted complaints, there is little doubt employees learning of such an inquiry will be reluctant to exercise their Section 7 rights in consequence. Further, the interrogation was not in fact isolated given the various other findings herein. I therefore sustain the General Counsel's complaint paragraph 16.

j. Complaint, Paragraph 17 — January 26, 2003 Hsan Hsiao Hsu interrogation allegation

Complaint paragraph 17 alleges that on or about January 26, 2003, Hsan Hsiao Hsu at the Corporate Center facility, interrogated an employee about the employee's union and/or protected concerted activities.

Driver Sun testified that he was the author of the January 24, 2003 letter quoted in part above and that he was one of the nine signatories. A few days thereafter, he had a conversation with Circulation Direction Hsan Hsiao Hsu alone in the parking lot regarding the communication. He testified that Hsu was holding in his hand the letter with the nine signatures and asked him: 'Whose idea is this?" Sun responded that the letter resulted from conversations "from everyone." Hsu then read a letter from President Su, the essence of which was that he did not support the election of supervisors by staff and would not approve the request. Sun recalled that Hsu told him that Su in-

tended that the supervisor position would always be filled by management and had scolded Hsu for having held the earlier election. The conversation then shifted with Hsu remarking that an employee had been caught by the security camera stealing newspapers

Mr. Chao Chan Kan testified that after the submission of the letter described above, he was leaving work when he came upon Director Hsan Hsiao Hsu and the two had a conversation which he described:

> Q. Describe the conversation for me. What was said?
>
> [Circulation Director Hsan Hsiao Hsu] asked the question whether that you're very unhappy with this foreman.
>
> Q. Go on.
>
> A. Yes. We say that the drivers are very unhappy.
>
> Q. What else was said during this conversation?
>
> A. He asked me why. I said that Jiang Ming thought that he had strong back up. Q. What does that mean, strong back up? Did you ask him what that means? A. That he is going to do this. But we try to get rid of him, is impossible.
>
> Q. What else was said?
>
> A. And he also said, I heard him say that he is going to fire one of the senior drivers. Q. Did he tell you who?
>
> A. No, no, no.

Kan was told by Hsu that the company has a videotape of an employee stealing papers and that he was going to be fired. He told Kan to be careful.

Circulation Director Hsan Hsiao Hsu testified that he knew that as a supervisor he was not entitled to ask employees about their union or protected activities and that he was not curious as to who had authored the letter regarding the delivery foreman. He specifically denied asking any employee about the identity of the writer of the letter.

The General Counsel argues that his witnesses should be credited and that a violation should be found. Counsel for the General Counsel argues that Sun and Kan corroboratively describe a pattern of conduct by Hsu. Further she argues that because the conversation was quickly turned by Hsu from the identity of the writer of the letter, to the president's opposition and then to the firing of a driver, that the interrogation reasonably had a particularly chilling effect on employees' concerted activity. The Respondent argues his witnesses' credibility given the disputed testimony and further argues the conduct does not rise to the level of a violation of the Act.

I found Mr. Hsu's denials unpersuasive and perfunctory. I credit both Sun and Kan both because of their more persuasive demeanor and because they credibly described similar conduct by Hsu and, in so doing, essentially corroborate one another. Based on the analysis immediately preceding, I find the interrogation violates Section 8(a)(1) of the Act and that the General Counsel has met his burden of proof regarding the conduct alleged in complaint paragraph 17. Paragraph 17 of the complaint is sustained.

k. Complaint paragraph 18 — February 2003 allegation against President Su

Complaint paragraph 18 alleges that in about February 2003, President Su, at the Corporate Center facility, instructed an employee not to sign letters or petitions or to otherwise engage in concerted activities.

Driver Jing Hua Zhang testified that he had a role in drafting, and signed, the letter, quoted in part above, concerning the driver foreman and about a week after its delivery spoke separately with Business Manager Gao and President Su. He first spoke to Gao suggesting to him that the drivers did not need Jiang Ming as a foreman. Gao acknowledged that the employees who signed the petition did not want Ming as foreman and asked who wrote the letter, to which Zhang responded: "everyone."

Later that same day, Zhang testified he went to President Su's office and there spoke to President Su alone. He described what was said:

> I said, you know, all of us are against Jiang Ming as foreman.
>
> Q. And did President Su reply?
>
> A. He said, wait until the result of our investigation.
>
> Q. What else did he say during this meeting?
>
> A. I cannot recall.
>
> Q. Did he say anything about the letter that you had signed?
>
> A. Yes.
>
> Q. What did he say?
>
> A. That he said that do not act like this, have a joint signature, this kind of —he said, just like the petition for the Union organization.

The General Counsel argues that it is undisputed that President Su did not want Zhang to circulate petitions or submit jointly signed petitions like the petition for Union organization. Counsel for the General Counsel submits that such an admonition from the highest official of the employer in the context of the events and circumstances underlying the complaint clearly violates Section 8(a)(1) of the Act citing *Midnight Rose Hotel & Casino,* 343 NLRB No. 107, slip op. at 10 (2004). The Respondent argues the assertions of Zhang are improbable and are protected by Section 8(c) of the Act and are defensible under *Rossmore House,* 269 NLRB 1083 (1980).

The conversation Zhang described with Su was not challenged by Su who did not testify. Zhang described the event convincingly and it does not seem inherently improbable that the President might give such advice to an employee in the circumstances then pertaining. I credit Zhang.

The parties dispute the degree of friendship between President Su and driver Zhang, but it is unnecessary to resolve that dispute. As the General Counsel's cited case: *Midnight Rose Hotel & Casino,* 343 NLRB No. 107, slip op. at 10 (2004), holds, even the advice of a friend if reasonably likely to chill protected concerted activity, violates Section 8(a)(1) of the Act. President Su's admonition to driver Zhang as set forth above is, in the entire context of events, in fact reasonably likely to chill his Section 7 rights and therefore the president's conduct vio-

lates Section 8(a)(1) of the Act. Accordingly, I sustain complaint paragraph 18.

i. Complaint paragraphs 19 and 20 — March 7 and 12, 2003 threats and, interrogations by Tung Lien Gao

Complaint paragraph 19 alleges that on or about March 12, 2003 Business Manager Tung Lien Gao, at the Corporate Center, threatened employees with promotion of a foreman about whom employees had concertedly complained, in retaliation for the employees concerted activities. Complaint paragraph 20 alleges that on March 7 and 12, 2003, Gao interrogated employees about their union and or protected concerted activities.

(1) Evidence

Driver Zhang testified that after the events described above respecting the employees efforts regarding Foreman Jiang Ming, Business Manager Tung Lien (Stephen) Gao held a luncheon for delivery drivers at a local restaurant and asked Ming Chiang to speak to the drivers as their foreman. The employees thus realized they had not been successful in their objections to Ming. The drivers again concertedly prepared a letter to management which employees signed asking management to "cancel the foreman system." The document was sent to President Su, Manager Gao and Director Hsu and bore on its face the notation that it has been copied to the Union.

A few days after the submission of the second communication, Zhang was directed to Gao's office and there had a conversation with Gao alone. He recalled that Gao told him that because the employees had joined together to sign the communication to management that they do not want Jiang Ming as Driver Foreman, Gao was going to promote Jiang Ming to a director position, i.e., the director of circulation, the supervisory position above the driver foreman position. Zhang did not believe Gao was joking. Driver Sun testified he too was brought to Gao's office after the second petition had been submitted and was told various things by Gao including: "[Hie said that if you don't like the foreman and he can transfer this foreman to become a director. But he said it half jokingly." Sun did not believe Gao was joking.

Driver Chao Chan Kan testified that the morning of the day the second letter was submitted to management, he was summoned to Gao's office and there had a conversation with him as well as fellow driver Ke Qing Wu, Director Hsu and Assistant Manager Lee. Kan testified Gao asked him if he had again sent in a petition or letter and that Kan denied it.

Driver Loi Chanh Phan, who also signed the second letter, testified he was brought into Gao's office and Gao asked where the letter had come from. Phan told him that he did not know. Gao asked if a girl had asked Phan to sign it, perhaps by telephone, and Phan told him that other employees signed it so he did. While he did not recall the entire conversation he recalled that Gao told him "we can solve [the problem] within ourselves. Why ask the outsider to solve this issue[?]"

Business Manager Gao testified that he did discuss the employees' second communication with Director Hsu and with the drivers about other matters mentioned in the employee letter and about the drivers' impressions of Supervisor Ming. He specifically denied telling Sun or Zhang that he was going to promote Ming because of employees' complaints about Ming. He also denied asking any employee who had written the letter and further testified that while concerned about the employee complaints he did not care who had written the letter.

(2) Analysis and conclusions, respecting, complaint paragraph 19

Respecting the allegation that Gao threatened employees with Ming's additional promotion because they opposed his recent promotion. The General Counsel urges the credibility of the testimony of the accusing employees and argues that such a threat is both a significant one given that Ming would have greater authority over them in a higher position and was clearly and explicitly directed to employees because of their concerted activity in opposing the forman. The Respondent urges the credibility of Mr. Gao's explicit denial and also notes that the statement under any resolution of credibility was a joke rather than a threat.

I specifically credit the testimony of Sun and Zhang as set forth above that Gao told them he intended to promote Ming in light of their employees' opposition to him. Gao spoke with many employees at this time and, based on observing him in the court room during many days of hearing, I believe that he could well have made a statement of the type attributed to him in an attempt at humor and not recall it at the time of the hearing. Indeed Sun explicitly characterized Gao's statement as half joking.

If the statement was made solemnly, there is no doubt it would be a bald threat and violate Section 8(a)(1) of the Act. But I find, rather, that Gao made the remark intending it as a joke. In such a setting it is appropriate to consider whether or not the remark under all the circumstances, from the employees' perspective and irrespective of the speaker's intent, reasonably could be expected to chill employees' Section 7 rights. On the facts presented here, I find that the remarks did have such a reasonably likely effect and that the statements therefore violate Section 8(a)(1) of the Act.

The employees had opposed Ming's promotion to driver foreman by submitting a signed petition. The petition was unsuccessful and Ming was promoted. The employees submitted a second petition seeking the promotion be undone. At that point Gao, a higher management official with the apparent authority to in fact promote Ming, states that because of the employees' efforts Ming will be promoted yet again to a higher position. Such a statement, made with a smile and a half-joking manner might well be amusing to the higher level management speaker, but even if the employees suspected humor was at the root of the remark, it would still reasonably be taken with doubt and fear by the subordinate employees. Even if half joking, the message is clear, management is in charge and things could quickly get worse if employees concertedly complain. I find Gao made the statement attributed to him and further find the statements violated Section 8(a)(1) of the Act. I therefore sustain complaint paragraph 19. /,

(3) Analysis and conclusions, respecting, complaint paragraph 20

The General Counsel concedes on brief at 114 that Gao was privileged to ask employees questions about their concerns and what they hoped to achieve by their petition, but "overstepped

the bounds of any allowable inquiry when he demanded of Driver Kan whether he had signed the petition." The General Counsel also argues that Gao also improperly questioned Phan about "where the letter had come from" and improperly suggested: "we can solve [the problem] within ourselves. Why ask the outsider to solve this issue[?]"

The Respondent emphasizes that Gao denied asking employees who was responsible for the letters or who wrote them. Rather he was investigating the basis for the employees' complaint as a precondition to understanding and dealing with them. Thus, the Respondent argues, the remarks should be found not to have been made and, even if they had been made, they were not threats or improper interrogations and were permissible under the Act.

Dealing with the General Counsel's first argument that Gao could not properly ask who signed the letter, I find that an employer who receives a letter bearing the signatures of a number of employees is entitled to ask the apparent signators if they had in fact signed the letter. Just as employees may feel their petition has greater power if it bears evidence of widespread support, so to the employer is entitled to determine if the purported support is genuine. Put another way, if an employee puts his signature on a written communication to his employer, that act constitutes a waiver of any right to privacy respecting whether or not the signature is genuine. Similarly, if an employer receives a letter bearing the signature of an employee, it is permissible to assert to that employee that the employer had received a document signed by him. Since this conduct could not rise to the level of a violation of the Act, it is unnecessary to determine if it occurred.

I reach the same conclusion regarding the remarks attributed to Gao regarding solving the problems without outside participation. I agree with the General Counsel that Gao's use of the term outsiders is a proxy reference to the Union. But on the facts of this case, where the Union was not certified and each party was defending their positions on that question, I do not find it was improper for the Respondent to make it clear that the Union did not as yet represent employees and that the employees could deal with the employer but that the employer would not deal with the union respecting employee terms and conditions of employment. Given the unusual context to the remarks, I do not find they violated the Act.

Zhang testified that Gao asked him who wrote the letter to which he replied "everyone". Gao denied asking the question progressing both indifference to the answer as well as knowledge of the various signatories from the petition itself. I am inclined to credit Zhang even though I have not done so respecting his termination as discussed below. The testimony of Zhang noted above is the type or question an employee might well better recall than a supervisor engaging in interviews with many employees. Further it is not a matter so obviously damaging to an employer, if disclosed, that a hostile employee would fabricate the event to advance a personal agenda. Finally, I simply believed Zhang because during his testimony regarding the matter his demeanor convinced me that he was trying to recall the events without a preplanned agenda. Even given the resolution noted, however, the question is a close one since the Respondent is correct, as the General Counsel notes, that when engaged in a course of investigation of employee complaints, the employer may inquire respecting particular employee views and opinions. Given that I have found a violation similar to that alleged here in my discussion of complaint paragraph 16 above, the remedy for a violation here will not add to the total remedy directed. This being so, I find it unnecessary to resolve the issue as to this final element.

Based on all the above, I shall therefore dismiss complaint paragraph 20.

2. Allegations violations of Section 8(a)(3) and (4) of the Act

Section 8(a)(3) of the Act in relevant part states that it shall be an unfair labor practice to discriminate against employees in regard to hire or tenure of employment or, any term or condition of employment to encourage or discourage membership in any labor organization. Section 8(a)(4) of the Act similarly prevents an employer from discharging or otherwise discriminating against an employee because the employee filed charges or gave testimony under the Act. The two provisions deal with discrimination for different reasons. Because any conduct found to be a violation of either or both of these provisions would also discourage employees' Section 7 rights, any violation of Section 8(a)(3) and(4) of the Act is also a derivative violation of Section 8(a)(1) of the Act.

Because the discrimination allegations herein generally do not turn on the distinctions between employee union activity and employee activity involving filing of charges or giving testimony under the Act—in the instant case the employees involved in the allegations to be discussed who engaged in filing charges or giving testimony under the Act were doing so as part of their union activities, the allegations are presented for ease of understanding as they appear below.

a. Beat changes

Newspaper reporters generally and reporters at the Respondent in particular are each assigned an individualized beat comprising a combination of one or more geographic areas, demographic groupings, and subject matter categories which in their totality are the particular reporter's assigned area.[11] Thus, one reporter's assigned beat might cover news arising from a particular city or geographic area, news involving the immigrant Chinese community and news in a sub category or area assigned the reporter so that in some cases reporters testifying described themselves as covering several beats at any given time.

Credible testimony was offered that creation and assignment of reporter beats allows reporters to specialize so that over time they develop expertise, contacts, and general practical familiarity with the areas of their beats and, further, allows the reporters in many cases to pursue their own interests and apply their own areas of expertise. Credible testimony was also adduced for the proposition that, although beats are beneficial to the newspaper and to individual reporters, beats need to be changed from time

[11] The *Oxford English Dictionary* First Edition, defines "beat" in part as a round or course habitually traversed by a watchman, sentinel, or constable on duty and as one's sphere or department. The later *Oxford American* extends the definition to the area involved herein: "the appointed round of a policeman or newspaper reporter; the area covered by this."

to time in two ways. First, beats need to be adjusted when reporter personnel changes occur or workloads need to be rebalanced. Second, beats need to be periodically reshaped and or reassigned all across the reporter complement to insure freshness of outlook and to prevent ossification, capture or simple over-closeness of the reporter to the subject matter and the individuals covered.

At relevant times the Respondent has made limited reassignments of reporter beats in response to personnel changes or staffing requirement changes. The Respondent also undertook a major reassignment of beats in 1998. Senior Reporter Lynn Wang testified that the 1998 reassignment process involved management consultation with reporters during the month before their implementation and a like period of adjustment as reporters began their new assignments. The next major reassignment of beats occurred in June 2001. That process was initiated by City Editor Jeff Horng who was hired into that position in January 2001.

Lien Wang's beat was changed in June 2001. Ching Fang Chang's beat was changed in June 2002 by City Editor Horng. These changes are alleged as violations of the Act.

(1) Complaint subparagraphs 6(a) and (b) - June 2001 changes to Lien Wang's assignments

Complaint subparagraph 6(a) alleges that on or about June 1, 2001, the Respondent imposed more onerous terms and conditions of employment on employee Lien Wang by changing her job assignments and complaint subparagraph 6(b) alleges that additional changes occurred on June 15, 2001.

(a) Evidence

There is no doubt that Ms. Wang was an active union supporter. Indeed she was one of two or three leading employee Union supporters, at all relevant times, and that, this fact was well known to the Respondent. The spring of 2001 was a high point of the NLRB representation case processing events with the election occurring on March 19, 1991 and the objections hearing proceeding from May 7, 2001 to June 29, 2001. As discussed under my consideration of complaint subparagraphs 8(a), 8(b) and 8(c) above, Wang had been wrongfully interrogated and threatened in February 2001 in connection with a dispute with its roots in a disagreement respecting a management decision not to publish an article by Wang, who at the time covered labor issues, regarding union activities at an area hospital. As discussed under my consideration of complaint paragraph 10 above, Wang's protected, concerted activities had been unlawfully restricted, on or about June 6, 2001. Further, Wang testified that reporters were concerned with a change in employee evaluation in the period preceding June 2001 and she was a leader in organizing a meeting of reporters May 24, 2001, and the submission of a letter to management complaining of the proposed changes.

Before June 1, 2001, at the initiation of City Editor Horng, but with the approval of his supervisor, Editor-in-Chief Chen, it was decided to generally reassign reporter beats. The decisions were communicated to employees on or about June 1, 2001, apparently with little predecision consultation, if any, with the reporters. Many reporters took the lack of prenotification and consultation badly and Wang was involved in talking with other reporters about the matter and communicating reporter disapproval to management. Some of those activities are discussed in the portion of this decision dealing with Section 8(a)(1) allegations above.

Wang who speaks both Cantonese and Mandarin dialects of Chinese had been assigned the Chinatown beat in the 10-year period preceding 1998 and had asked for and received beat reassignment at that time, being then reassigned to the City of Monterey Park and the Taiwanese community. The June 1, 2001 beat reassignment assigned to Wang both the Chinatown and Monterey Park beats. While there was much testimony and significant dispute respecting the relative workloads of these beats, there was little doubt and I find that the two together represented a very substantial workload. Further, their geographic separation and requirement of each for daily coverage required substantial back-and-forth commuting—a difficult matter in the freeway traffic of Greater Los Angeles—and presented the likelihood of scheduling conflicts. Wang on June 1, 2001, also had her beat altered by taking away her traditional coverage of "labor" issues and substituting as a technical specialty coverage, science and space exploration. Wang had no technical or scientific experience or education.

When Wang complained to City Editor Horng, she testified he simply told her she was a capable reporter who could do the work of many others. As part of the subsequent concerted activities of Wang and other reporters complaining of the assignments and suggesting alternatives, described supra, Wang in her letter went to some length to argue her new beat was onerous and not well suited to her and to propose alternatives. Management indicated it would listen to reporters' views and at least some reporters' beats were adjusted on or about June 15 as a result of the feedback process. Wang at that time received additional areas of coverage: governmental benefits, welfare and senior affairs. Thereafter Wang again protested to the Chief and City Editors and, wrote a letter which Editor-in-Chief Chen responded on July 13, 2001. Chen's letter asserts in part:

> City Editor Horng believes that all of the beat distributions are reasonable and you have both the ability and the time to take care of the important news on the beats you cover.
>
> The situation is just as you know it to be. There might be many different beats set forth on our distribution list, but that does not mean that there will definitely be a lot of news to cover every day. These have to be decided by seeing whether it is a high or low news season, the character of the beat itself, and whether or not there are many things that are worth being covered. You in particular have minutely divided your beats into "five main beats." But in the past, since this paper used a lot of translations of outside wires for the LAPD and the Los Angeles city government, the news that was covered by reporters was comparatively low. You divided up some of the beats so finely that it would appear that you have quite a few beats, but in fact that is not true. What you are saying does not describe things accurately.
>
> . . . .
>
> Beat adjustments are definitely not meant to "punish" you or any coworkers for joining the union. You were given those beats because you have the strongest coverage experience in

> the City Desk, and are one of the highest paid reporters. City Editor Horng believes that you have enough ability to display outstanding coverage on your news.

As discussed supra, the reporters pressed their case for changes after new beats were announced. City Editor Horng testified that after meeting with the reporters adjustments were made on or about July 1. Wang testified that her beat was adjusted as well adding: "all the government benefits, welfare, like SSI, SSA, Medicare, all kinds of government benefit and also the seniors' problems. How the seniors related to the issue."

The beat changes, as adjusted, went into effect on July 1, 2001.

Wang testified that after the June 2001 beat changes were in place she could barely keep up with her work and that she worked substantially more hours. She testified that when she asked City Editor Horng to have others help to cover simultaneous events he did not always provide the request assistance.

(b) Analysis and conclusions

The General Counsel argues that he has established a strong initial showing of discrimination. Wang was an open and notorious union supporter who was a leader in the ongoing union campaign and who took a leadership role in the concerted activities of the reporters in expressing complaints at the relevant time. The Respondent, throughout the year 2001 into June and beyond and through the same management agents who were the decision makers who changed her beat, had threatened and coerced Wang in an effort to chill her Section 7 activities.

Against this background and history of animus against Wang for her protected and union activities, argues the General Counsel, the beat changes instituted in June 2001 must be judged. Those made to Wang's beat as announced on June 1 were preemptory as all were, but were different and more onerous than the changes to the other reporters beats because of the extraordinary increase in work required of Wang. And, while other reporters were able to obtain ameliorating changes and adjustments in mid-June, Wang's careful explanation of the burdens of her new assignment were ignored and she received yet more additions to her beat.

The Respondent argues that the beat changes were customary and that while some reporters were unhappy with changes that is a natural resistance to change. Counsel for the Respondent notes that Wang had complained and resisted earlier assignment changes in 1998 as well as the changes of 2001. Counsel notes the testimony of Respondent's witnesses as well as the communications to Wang at the time indicating that the Respondent's editor-in-chief and city editor did not think her new beat was as difficult as she characterized it, nor that it was beyond her since she was an experienced and capable reporter. The Respondent further notes that the reporters work requirement of writing a set number of words daily did not change and was a uniform requirement among reporters. Finally the Respondent denies that the beat changes were discriminatorily motivated.

The Board in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), established a test for approaching discrimination allegations which was restated in *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996):

> Under *[the Wright Line]* test, the Board has always first required the General Counsel to persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employees had not engaged in protected activity. *Office of Workers Compensation Programs v. Greenwich Collieries*, [114 S.Ct. 2551, 2557–2558 (1994)], at 2258.

The parties addressed their argument respecting the beat assignment allegations within the *Wright Line* framework and it is appropriate to consider the two discrimination allegations describing Wang's beat reassignments utilizing that analysis. Complaint paragraph 6(a) will be addressed initially.

There is no doubt and I find that the General Counsel has met his burden of showing that Ms. Wang's protected activities: her leading role in reporters' concerted activities, her union activities and her participation in Board processes were a motivating role in the challenged June 1 beat reconfiguration. Wang's activities were known to the Respondent and the Respondent's agents had shown hostility to Wang for her activities *up* to that time, violating the Act as found, supra.

Turning to the employer's affirmative defense that it would have taken the same action even had Wang not engaged in protected activity, it is necessary to break down the actions taken. First there is no true dispute[12] and I find that the Respondent would have readjusted reporter beats when it did. The testimony established that beats are periodically changed both in the newspaper industry and by the Respondent. It follows therefore that the Respondent would have adjusted Wang's beat along with the other reporters as announced on June 1, 2001. The issue then is the question of whether the particular changes in Wang's beat would have been made absent her protected activities.

The Respondent's evidence is that its decision makers, i.e. the Editor-in-Chief and the City Editor, took the decision at issue because they thought it appropriate, did not think it was a significant burden on Wang and, in all events, did not modify her beat to punish her. More specifically the Respondent's testimony is that the Respondent's standard was to rotate major beats to keep news coverage fresh and it was appropriate then to give Wang new areas to cover.

Substantial testimony from both the Respondent's and the General Counsel's witnesses was offered advancing conflicting assertions about the degree of difficulty the new assignments presented to Wang. To some extent the testimony revisited the exchange that had occurred at the time between Wang and the Editor-in-Chief and City Editor. The argument has two aspects. The first is the evaluation of how much work the new beats in their totality involved compared to earlier work assignments. Wang testified they totaled a burdensome load which required an excessive number of hours of work. The Respondent agents' view was that Wang was a very experienced, highly paid, able

[12] The General Counsel did not allege that the general reporter-wide beat reassignments or the timing of the general reporter beat reassignments violated the Act.

reporter who, while she complained about beat reassignments as a matter of course, and would be able to do the work which was simply not as burdensome as she claimed. And the Respondent argues that in effect second guessing the Respondent's evaluation and assignment of new coverage is impermissible: "The concept of restraining a newspaper employer's right to change beats and coverage as new warrants infringes on entrepreneurial and constitutional free speech rights." (R. Br. at 7.)

The second and important aspect of the evaluation is the Respondent's argument that the assignment of beats is not the assignment of a particular quantum of work that increases proportionately to the news potential. Rather argues the Respondent, the work obligation of the reporter is to produce new articles of a fixed number of words per day—an obligation born by all reporters. While a reporter's beats may vary over time, the actual work load, i.e., the required word submission, does not. The Respondent also notes that the submission of extra words generates credit and that supervision assists the reporter by enlisting the support of other reporters to cover simultaneous events. Wang testified that relief might be requested, but in the event was not always provided.

The record is substantial and the testimony conflicting on the degree of reasonableness of the beat reassignment given Wang. The matter was not quantifiable at the time of assignment nor thereafter. Although the Respondent bears the burden under the *Wright Line* analysis of establishing that it would have taken the action it did absent the protected activity, the heavily subjective nature of the question of the burden involved tends to favor the Respondent's witnesses. For in this case, it is necessary to establish that the beat assignment was viewed as a punishment of Wang by the assigning agents of the Respondent.

Based on the record as a whole, and in particular the testimony of the Respondent's agents regarding the issue of the difficulty of the assignment made as it impacted on Wang and their basis for making the beat reassignment, 1 find the Respondent has met its affirmative defense that it would have taken the action it did in all events. I realize I have discredited the denials of these individuals, supra, regarding what was said at certain meetings and in certain conversations. I had that history in mind when considering the allegation involved herein. I am convinced however that Horng and Chen, in testifying as to their application of their editorial discretion in assigning beats to the other reporters and Wang, were honest and forthright and did not in fact do other than adjust the reporter beats as announced on June 1 based on their newspaper experience and judgment. It follows therefore that the General Counsel has not met her burden with respect to complaint subparagraph 6(a) and it shall be dismissed.

The same analysis must be undertaken respecting the second adjustment in Wang's beat at the end of June. The pre-June 1 facts considered above remain relevant. Subsequent events are also relevant. Wang's protected concerted activity in acting as a reporter spokesperson continued between the announcement of the beat reassignment on June 1 and the second adjustment a few weeks later as did her participation in the representation hearing on objections. Indeed as discussed in earlier sections of this decision, the Respondent and Wang had heated exchanges in this period.

For the same reasons augmented by the additional evidence noted, I reach the same conclusion regarding the General Counsel's initial case as I have above respecting the initial June 1 announced beat changes: the General Counsel has met his burden of showing that Ms. Wang's protected activities: her leading role in the reporters concerted activities, her union activities and her participation in Board processes were a motivating role in the challenged June 1 beat reconfiguration.

I have found above that the Respondent established that the June 1 announced beat changes would have been implemented even absent Wang's protected activity. I made that finding in part because I could not find—even given the burden the Respondent bears at this stage of a Wright Line analysis—that Wang was punished by the changes made as opposed to assigned the adjusted beat for benign reasons. I do not come to the same conclusion respecting the additional assignments put on Wang in the second beat adjustment in later June. As set forth below the Respondent's prevailing justification for the initial beat change does not credibly apply to the second.

Wang led the reporter protest of the beat changes in June and, as set forth above, the Respondent violated the Act and otherwise demonstrated great animus to her for her actions. After these protests, a focus of which was Wang's argument that her new beats were too much for her and the other reporters complaints, the Respondent provided beat adjustments to other reporters but not only denied Wang relief but added to her total beat by assigning her additional beats. I found the Respondent's arguments sufficient as to the June 1 announced changes. Beats as discussed above, are not fixed quantitatively measurable production obligations.

The lack of quantification arguments found persuasive above as to the initial changes simply do not explain the additional beats that were added to Wang's workload later in June. The Respondent did not credibly defend nor satisfactorily explain its motivations for simply increasing Wang's beats in response to her complaints that the earlier reassignment was simply too much for her. The fact of these unexplained increases following on the concerted efforts Wang undertook in June supports the government's argument of a heightened hostility directed to Wang based on her concerted efforts with other reporters' efforts to change her and other reporters' beat reassignments. Meeting an employees complaints that the work is too much by assigning additional work is a course of conduct that requires more explanation that the Respondent has provided on this record.

As to these latter beat changes, therefore, I find the Respondent's defense fails. I find those beat additions would not have been made had Wang not acted concertedly with other reporters and continued to press the Union's cause in Board proceedings and in meetings with the Respondent wherein she referred to herself as the Union steward. I find therefore that the additional changes/increases to Wang's beat made in the latter part of June violated Section 8(a)(1), (3) and (4) of the Act. The General Counsel's complaint subparagraph 6(b) is sustained.

(2) Complaint (subparagraph 7(f) — June 30, 2002 changes to Ching Fang Chang's job assignments

Complaint subparagraph 7(f) alleges that on or about June 30, 2002, the Respondent imposed more onerous terms and conditions of employment on employee Ching Fang Chang, by changing her job assignments. The conduct of the Respondent is further alleged to discriminate against employees because of their union activities and in so doing to violate Section 8(a)(3) and (1) of the Act

Ching Fang Chang, a former employee of the Respondent, was a union supporter and testified on the Union's behalf at the hearing on objections when it ended in June 2001. During her years as a reporter from March 1997 to September 30, 2002, Ms. Chang had as part of her beat: Chinese Folk Music and Opera, Opera and Theater. She characterized herself as the primary reporter covering cultural matters, performing arts, music, etc. She would attend performances, sometimes on her own time, and review them without critiquing the performances.

Ms. Chang testified that she had written an article or review of a Chinese Opera performance in 2002 in addition to her normal daily quota of article characters. When she approached City Editor Horng about obtaining credit for the extra words in accordance with normal practice, Horng denied her request. He told her the article was not deserving of credit, should not have been written at all and, despite her protests that the subject matter was part of her beat, told her that such articles should not be written in future.

Chang testified that in June 2002 following a regular evening reporters' meeting she was asked to remain and met with Editor-in-Chief Chen and Horng. Chen, in her memory, in an agitated and loud manner told her that an article she had written the previous day was unnecessarily long and covered an insignificant event—a concert—in "too big" a manner. Chang described what happened next:

> I say, "Chief Editor, can you please lower down your volume a little bit," and he got very angry by my remark. Actually, he was quite hysterical. He say, "Who do you think you are? You don't have any right to tell me to lower down my volume. I always talk like this, and I have the right to speak at any volume I want." And then I replied, I say, "No, you don't always talk like this." And then he say, "I told you, you don't—you are not only—not only do you have a bad job performance, you also have a very bad attitude. I'm telling you to improve your job performance, and you are telling me to lower down my volume, and you don't have the right to tell me this."
>
> Then the conversation went on and it was all critical from him. At one point, I told him that—I say, "Chief Editor, I wish you would could have rational and respectful communication." And then he say, "You think this is a communication? I tell you this is not. This is a warning. Did you hear me? This is a warning. And you just wait to receive another warning later." And because only me was present there and I didn't have other coworkers with me, so I learned from Lynne Wang. I took out my notebook and started taking notes.... He say, "You think that you can use this against me?" I didn't respond. I kept on writing.

City Editor Horng readily admitted criticizing Fang's articles on art and leisure and testified: "She liked to write what she liked to write. She loved the art and culture. Therefore, her report, it is kind of, over emphasized, in this regard." Nonetheless he recalled her as a good reporter who wrote well. He testified that when Fang told him she was going to resign, he attempted to dissuade her telling her she was doing a fine job. He testified that he removed art and culture from her beat, but did not recall the date he did so. He also recalled he had a meeting with her and Editor-in-Chief Chen in which their perceptions of her writing shortfalls were discussed. At the time of these events he testified he did not know she was a union supporter.

Editor-in-Chief Chen testified that he had long felt that Fang's articles were overlong and had spoken to Fang about it, discussed it with Horng and asked him to speak to her about the problem. He recalled the meeting between himself, Horng and Fang:

> I said to Ms. Ching Fang Chang that your article usually it too long, unnecessarily long. It just a small, minor activity in the community, usually some kind of recreation, you know, activities such as a concert.
>
> I know that during the off day, especially Saturday and Sunday she like to see some, you know, performance or—or listen to the music, musical concert, and then come Monday she wrote a long article and she miss a lot of important things.
>
> For example, the mayor of Diamond Bar, Vincent Chang's inauguration ceremony, such important news, she did not report it; not even one word, not even a picture.
>
> And I mention Sing Tao Newspaper had treated this news as headline. This has been a damage to our newspaper reputation. And such as this important news missed many time.
>
> Therefore, I told her that, you know, important news you have to differentiate which one and the tone I speak is just like I am giving the testimony right now. But her attitude was so bad, can you lower down your voice. I told her, I am telling you right now I did not raise my voice.
>
> And before this meeting, I already gave her a letter ask her to improve. I told her, you know, you have such a bad attitude right now. And she said, I don't care, you know, I am not afraid of anything. That is what she said.

Chen also denied knowledge of Fang's union sympathies or support at relevant times. Special Assignment Editor Andrew Sun, Fang's former supervisor, essentially corroborated the views of Horng and Chen regarding Fang's over focus on art and culture to the detriment of harder news.

The General Counsel argues that Chen at the meeting of Fang with Chen and Horng during which they removed Fang's beat coverage of art and cultural affairs revealed Chen's motive was Fang's protected activities when he made the reference to her writing down what he said in a manner parallel to statements made to Wang as discussed, above. Counsel for the General Counsel also urges that the substantial delay between Fang's testimony before the Board in June 2001 and her union activities and the discrimination against her should not be fatal in the context of events here and counsel attacks the claims of

Chen and Horng that they did not know of Fang's protected conduct at the time her beat was circumscribed.

The Respondent characterizes Fang's habit of overwriting cultural events as long known and long criticized by her supervisors and the decision to curtail her beat to force her to write as the management of the newspaper thought proper was uncomplicated and totally non-discriminatory. Counsel for the Respondent argues the General Counsel has not established a prima face case under *Wright Line* and that in all events, given that Fang resigned some years ago, the allegation would be regarded as de minimus.

I agree with the Respondent that the General Counsel has not met his burden of establishing the initial *Wright Line* finding that Fang's activities were a substantial or motivating factor in the challenged removal of art and culture from Fang's beat. I found credible the testimony of Sun, Chen and Horng that they regarded Fang's attention to those elements of her beat as excessive and that the removal of that element of her was based on those subjective perceptions and designed to eliminate the problem. The General Counsel places a great deal of reliance on Chen's testiness in the meeting described above. To counsel for the General Counsel, the pique of Chen was in response to Fang's protected activities, I rather saw the reaction as likely stemming from the, to Chen at least, insubordinate conduct of a reporter who would presume to instruct him on his volume, cadences and demeanor while he was counseling her in her work.

I find therefore that the General Counsel has not met his burden of proof with respect to complaint subparagraph 7(f) and it shall be dismissed.

b. Complaint subparagraph 6(c) - The November 12, 2001 sick leave policy implementation allegation

Complaint paragraph 6(c) alleges that on or about November 12, 2001, the Respondent implemented a new sick leave policy for all employees, including employee Lien Wang. The complaint further alleges this conduct occurred because of employees' Union and concerted activities, to discourage employees from engaging in such activities and because the employee testified in Board matters and/or attended a Board representation hearing, thus constituting a violation of Section 8(a)(3) and 8(a)(4) of the Act.

November 6, 2001, election day, was a traditional busy time for reporters covering various election related news. Reporter Lien Wang had volunteered for and been assigned the election of an official in the city of Monterey Park, a matter of interest to the Southern California Chinese community and the Respondent. Feeling ill on that day, Wang tried unsuccessfully to reach her supervisors by telephone in midday and, failing that, left a message indicating she would not be able to work any longer that day. Management was unhappy with Wang's failure to actually make personal contact with, i.e., actually speak with, an authorized agent of Respondent to report her unavailability and insure that the Respondent's agents know of the unavailability as soon as possible thereby allowing them to make the earliest possible substitute arrangements for coverage.

The Respondent thereafter made it clear to all reporters that the simple leaving of a phone message or facsimile transmission announcing a reporter's unscheduled absence or inability to continue work was not satisfactory and that actual contact with a designated agent of the Respondent was necessary. Wang testified Editor-in-Chief Chen made it clear at the November 12, 2001 reporters' meeting that reporters were to make actual contact rather than leave a message or facsimile transmitted announcement of any unscheduled absence. At that meeting, Wang and Chen argued about the requirement and the November 6 events, Wang was required to write a report about its circumstances and was in effect issued a warning for it in conjunction with other absence issues. These latter actions were not alleged as violations of the Act in the complaint.

The General Counsel argues that the "personal contact" requirement applied to Wang and all employees thereafter was new, inconsistent with past practice, and was implemented due to the protected activities of the employees. Counsel for the General Counsel notes there is no contention that a written rule on the issue had ever existed. She further notes that only Wang was required to write a report respecting her conduct in the situation described and that the rule was discussed at the November 12 reporters' meeting at which union activities and unfair labor practice charges were discussed. The Respondent argues that the personal contact requirement was established past practice, had solid business reasons behind it, and neither it nor Wang's criticism for not following it was based on Wang or any other employees protected activities.

The General Counsel and the Respondent adduced various witnesses on the issue of the personal contact requirement. The Respondent's witnesses testified that the policy, if never written, was clear and that reporters knew that it was necessary to report in person on important issues rather than leave a voicemail. The General Counsel's witnesses testified that they felt an obligation to contact the Respondent when a problem of unexpected unavailability arose but that it was not necessary to do so in person, but could be done and had been done by voicemail or facsimile message.

Based on the record as a whole I reach the following conclusions. First, the General Counsel may not claim that the warning issued to Wang as described above was a violation of the Act because it was not alleged in the complaint to be improper. Second, since there is no 8(a)(5) unilateral change allegation contending there was a status quo obligation on the Respondent, the General Counsel must establish more than just a change in policy to prove her case, but must also establish that any change was instituted for improper reasons. It is not unusual for unwritten rules, which are more akin to good practice standards, to be differently understood by and followed in different ways by different employees. In the instant case the actual contact requirement seems never to have been a simple, in all cases, black letter universal requirement. It is clear that reporters had not consistently made personal contact rather than leave messages by voicemail or facsimile messages to report unexpected unavailability. I credit the General Counsel's witnesses' testimony in these regards. I also credit the Respondent's witnesses that they honestly felt the rule required actual contact, for important situations at least, and that Chen did not believe he was changing the rules in stating therequirement to the reporters or in upbraiding Wang.

I find therefore that, if the rule was changed, it was changed by a more detailed specification of circumstances. If it was changed in response to Wang's actions, I further find it was not changed in retaliation for her protected conduct or the protected conduct of other employees. In effect I find that the witnesses were each testifying truthfully about what they believed the rule was and had been, but that among the staff there had been differences of interpretation and application to that time. Putting these findings in the framework of *Wright Line*, I find that the General Counsel has not established that the Respondent's hostility to the employees protected concerted, union or Board related activities was a substantial or motivating factor in the challenged employer decision and that, if the General Counsel had established that proposition the Respondent would have maintained the rule as it had even if the employees had not engaged in protected activity. Thus I find the Respondent's actions did not violate the Act. Accordingly, I shall dismiss complaint subparagraph 6(c).

c. Complaint subparagraph 7(a) - Written Warning to employee Yun-Min Pao

The complaint alleges at paragraph 7(a) that the Respondent issued a written warning to Yun-Min Pao on or about December 30, 2001. The complaint further alleges this conduct occurred because of the employee's union and concerted activities and to discourage employees from engaging in such activities.

Mr. Yun-Min Pao is a long-term employee and editor. On or about December 31, 2001, Editor-in-Chief Chen issued a warning letter[13] dated December 29, 2001, to Mr. Pao. It was captioned: "Notification Regarding Improvement of Editorial Work" and stated in part:

> On many occasions in the past few years, you have been pointed out by me that you made mistakes in your editorial work, and that you have been notified both verbally and in writing to make improvement in that respect. Unfortunately, as of the present time in 2001, you still repeatedly fail to follow the proper editorial procedures that require you to thoroughly check and examine the layout that you have edited, or that on many occasions, not match the article, wrong words were used characters were wrongly typeset. There incidents of mistake have be recorded and are verifiable. Despite the fact that most of the mistakes were timely detected and corrected by other proofing staff or by the supervisor of the final press-proof, these mistakes nonetheless are the result of your violation of the regulations that require editorial staff to conduct thorough examination prior to the finalization of the press-proof and to devote complete concentration in their work in order to avoid mistakes. Additionally, your mistakes would exert undue burden on your down-stream workers and do not meet the quality control requirements.
>
> [pages of specified errors omitted]
>
> Due to the fact that the occurrence of these problems for you is significantly higher than the other editorial staff and the fact that mistakes have occurred repeatedly, it has reached a point where reassessment of your "job competence" is warranted. Immediately upon your receipt of this notification, you are to make improvement of the quality of the edited page and translation draft assigned to you each day, to implement stringent practice to safe guard against mistakes, to upgrade quality of the headlines, and to follow the required editorial procedures, including computer typesetting of the same-day draft by editor.
>
> We do hope to maintain the high quality of our page layout and news. However, your recent performance has already imposed an undue burden on the editorial team as a whole and has subjected this newspaper agency to the risks of damaging our newspaper's reputation and getting protests from our readers due to page layout mistakes. Please provide your cooperation by making the necessary improvement. Should you have any question or problems that necessitate communication, please don't hesitate to contact the editor-in-chief Chu Zi-Cheng or me for discussion. Please don't forfeit your own chances.

Reporter Pao took umbrage at the memo and the two individuals exchanged heated memoranda each contesting the others perception of Pao's editorial work and other editors' work and Chen taking the position that not to admit one's errors was incorrect.

Pao testified that he had not previously received a written warning nor been spoken to about his purported errors prior to 2001. He disagreed with the Editor-in-Chief's criticisms. Editor-in-Chief Chen repeated his criticisms of Pao's editorial work and defended his evaluation of Pao and his warning letter.

The General Counsel views the criticism and warning as justified by Pao's work failings as simple pretext and asserts the true motivation for the actions against Pao was his protected concerted, union and Board related activities. The Respondent argues Chen held strong views about editorial performance and was entitled to hold those views and to criticize and warn Pao when he did not meet the performance requirements.

In resolving the dispute respecting complaint subparagraph 7(a) concerning the warning letter, the credibility of Chen on the issue of editor performance generally and Pao's performance in particular is paramount. This is so because there is an element of subjectivity inherent in such performance evaluation and motivation is yet more a subjective rather than objective matter. While i have elsewhere in this decision found Chen did not recall correctly things he said to employees, I find the instant situation quite different. Statements made to employees in the various meetings discussed supra were not at the center of Chen's concerns. it is quite clear, and I credit Chen in these regards, that Chen had strong views about editorial quality and performance. For Chen to have been wrong about his conclusions as to Pao as he testified, he could not just have been forgetful or have misremembered. His views and memory were so strong that to discredit him essentially requires that I find he was lying and his entire course of conduct was a fiction and pretext to get to Pao because of Pao's protected conduct. Based on Chen's demeanor, which was passionate and convincing in expressing his views on this subject, i am simply not able to make such findings.

[13] The parties submitted two interpretations, one form the Union and one from the General Counsel. I find the differences of no consequences to the allegations. The Government translation is quoted.

I find Chen took the actions he did against Pao for the reasons he gave. This does not mean of course that Pao was in error in the disputed instances. That, however, is not the issue when an employer is disciplining an employee. I find Chen disciplined Pao not because of his protected conduct but rather because of Chen's views of Pao's conduct as an editor. Given this finding, in *Wright Line* parlance, even if the General Counsel had established his prima facia case, I would find that the Respondent would have taken the action at issue against Pao even had he not engaged in protected conduct. Complaint subparagraph 7(a) is therefore without merit and shall be dismissed.

d. Annul bonus reductions

The Respondent at all-limes material has provided its employees with individualized annual bonuses which are paid in January, concurrent with the Chinese New Year, for the employees' performance during the preceding year. Thus, for example in January 2003 employees received their bonuses earned in the year 2002. The complaint alleges that various employees had their bonuses decreased in January of given years. The meaning of the complaint language used is evident given the practices of the Respondent respecting bonuses and the position of the parties during the litigation. The complaint alleges that the Respondent, for each named employee, lowered the amount paid in January of each alleged year as the annual bonus for the preceding year from the amount that would have been awarded, but for the protected activities of the employee.

The process for determining individual employee bonuses is not generally known by employees and employees are not provided either with written evaluations or of explanations regarding their bonuses. Substantial testimony respecting the general process and the application of that process to the named employees in the named years are under challenge in the complaint.

The Respondent calculated the annual bonus of its employees in various ways depending on the years involved, as well as the department and employee job position involved. At relevant times several aspects of the process were generally common. First, the size of all bonuses starts with the Respondent's performance in a given year. Individual bonuses within a given year are based on annual evaluations which cover the period December of the preceding year through November of the evaluation year. Employee performance is divided into elements: 60 percent is based on work performance, 20 percent on diligence and 20 percent based on working spirit. A two-digit numerical score for these separate elements is calculated and from those three scores using weighted averaging, a total performance score results. A grading scale is then applied to the employee's numerical score by including the employee in the appropriate category as follows:

Category	Numeric Score Range	Grade or Cate-
Exceptional	95 and above	1
Superior	90 — 94	2
Excellent	85—89	3
Above Aver-	80 — 84	4
Satisfactory	70—79	5
Unsatisfactory	60 — 69	6
Poor	below 60	7

Employees in each ranking category earn the percentage assigned that year to that category by the Respondent after it has evaluated its general institutional performance. The higher the ranking category, the higher the percentage each employee in the category receives. Thus all employees in the average category in a given year would receive the same percentage number and employees in the higher categories such as "superior" would receive higher percentage numbers. The percentage number assigned each employee is multiplied by the employees monthly compensation for the year in review and the resulting amount is the employees' annual bonus for that performance review year, paid to the employee in the January of the following calendar year.

Perhaps more simply stated: a given employee's annual bonus is established by determining their performance score and the performance category in which that performance score is classified. Each classification has an associated percentage assigned by the Respondent each performance year based on overall institutional performance. The percentage each employee is assigned is then multiplied by that employee's monthly remuneration and the resulting sum is the bonus awarded.

Each employee's bonus is thus based on: (1) the Respondent's overall performance, (2) the employees' performance category, and (3) the employees' monthly salary during the period. The General Counsel has not challenged the Respondent's annual evaluation of its own performance and associated general bonus amount determinations and that element of all employees' bonuses is therefore regarded as a benign given. The General Counsel is not challenging the uniformly-applied performance categories which translate a given employee annual score into a percentage multiplicand. Finally the General Counsel in this preceding is not challenging the annual salary or general non-bonus compensation system of the Respondent as applied to any employee.

Thus, while individual bonuses depend on the many variables noted, the General Counsel's does not argue that any factor other than a single one was improperly applied. The single factor the government challenges respecting each employee named in the complaint in this element of the case is the employees' performance number in given years, i.e. that number assigning the named employee in the named years to one of the performance categories described above. The General Counsel's sole theory of a violation in the bonus allegations is that the employees' annual performance numbers were lowered or reduced because of the employees' protected activities, placing the employees in lower performance categories which resulted in lower percentage multipliers applied to their monthly compensation and consequentially resulting in lower total annual bonuses.

The employees named in the complaint as suffering from reduced bonuses are set forth 40 with the years under challenge. Each is then discussed thereafter.

Lien Wang 2001 bonus paid January 2002

	2002 bonus paid January 2003, 2003 bonus paid January 2004
Yun-Min Pao	2001 bonus paid January 2002 2002 bonus paid January 2003, 2003 bonus paid January 2004
Hui Jung Lee	2001 bonus paid January 2002

(1) Employee Lien Wang - Complaint subparagraphs 6(d), (e), and (f)

Complaint paragraph 6(d) alleges: "About January 2002, the Respondent decreased the amount of Lien Wang's annual bonus." Complaint paragraphs 6(e) and (f) make the same allegation respecting Wang's next two annual bonuses. The complaint further alleges this conduct occurred because of Wang's Union and concerted activities and to discourage employees from engaging in such activities and because Wang testified in Board matters and/or attended a Board representation hearing.

Ms. Lien Wang was at all times evaluated as a reporter. Her performance scores over a relevant period were:

Reporter Lien Wang

Year	Total Score	Category Rank	Performance 60%	Diligence 20%	Working Spirit 20%	Supervisor Adjustment
1997	89	4	54.6	17.6	17.8	-1
1998	85.4	3	51.6	17.8	17	-1
1999	86.6	3	52.8	16.8	17	0
2000	88.8	3	52.8	17.6	18.4	0
2001	74	5	48.6	15	16	0
2002	74	5	46.8	15.5	16	0
2003	73.4	5	46.8	14	16	0

The Respondent's pre-City Editor Horng evaluation system for reporters included consideration of weekly self-nominated articles through a process of review and voting by the nominating reporter, the Editor-in-Chief, the City Editor, the then two Deputy City Editors and the Translator—seven voters. Affirmative votes by three of the seven awarded points to a particular article and points awarded during the year were totaled to comprise the performance based 60 percent portion of the annual evaluation score.

After Jeff Horng became City Editor before the 2001 year evaluations were done, reporters no longer nominated articles, but Horng or a Deputy City Editor did so. Cash bonuses were awarded of a range up to $40 as voted by the City Editor and the two Deputy Editors with Chief Editor Chen the final authority. These awards were tallied and used as the basis of the performance points in evaluations thereafter.

Points for the diligence and working spirit portion of the evaluations were assigned by the Deputy City Editors and the City Editor and were averaged. The Editor-in-Chief reviewed evaluations and had the right and practice of adjusting employee totals up or down (See "Supervisor adjustment" column in above table.). This was done in Wang's case in her 1997 and 1998 evaluations when her total was reduced one point in each evaluation, but no changes were made in later years by higher supervision.

A quick review of Wang's evaluation numbers summarized in the table above makes it clear that her ratings suffered a drop from category 3 down to category 5 for the period 1998–2000 to the period 2001–2003. Each category annually has a percentage assigned to it and the percentages diminish as the category number increases. Thus, in the years 2000–2003 her rating's drop to category 5 in each of those years significantly reduced the percentage of her salary which would be used to calculate her bonus the following January. Her annual bonuses dropped significantly in consequence. Other factors such as her annual salary amount and the percentage the Respondent assigned to each performance category were also factors in determining bonuses, but they are not under attack by the General Counsel and are not analyzed herein.

The Respondent, primarily through the testimony of City Editor Horng and Editor-in-Chief Chen, suggested that Wang's scores dropped for two reasons. First, she missed a great deal of time in the latter years here under review and submitted many fewer articles. The consequence of fewer days of work and fewer submitted articles was lower performance numbers based on her articles. Second, Horng argued, Wang in this period exhibited less than an average amount of diligence and working spirit. Thus, he testified he received complaints respecting her attitude and objectivity from outsiders and concluded Wang selected articles to write based on her interests rather than the importance of the news involved. Chen testified that his opinion of Ms. Wang's work has been constant for some time and long preceded the advent of union activities at the facility. He also testified he regularly received complaints from Deputy City Editors regarding Wang, that Wang was very difficult to reach and that she did not make sufficient efforts to make herself available to be contacted. Ms. Wang missed two months of work in 2001 and took 19 days of vacation. The parties stipulated that Ms. Wang missed 62 work days in 2002. She missed over 40 days in 2003. The Respondent informed Wang when she complained about reduced bonuses that her scores were lowered as a result of missed work.

The General Counsel argues that the evidence is clear that the Respondent had knowledge of Wang's protected concerted, union and Board related activities and as established in the litigation of the allegations of violations of Section 8(a)(1) of the Act, demonstrated a hostility to those activities and to Wang's activities in particular. Counsel for the General Counsel notes the significant and precipitous reduction in the quality of Wang's evaluations following the onset of union organizational activities and the consequential reduction in her annual bonuses.

The Respondent argues that the record is clear that Wang's raw scores, and thus her bonuses, fell largely because of her decline in attendance and output and, in lesser part because of her attitude toward her work. Even if the General Counsel has established his initial *Wright Line* case the Respondent "would have taken the same action regardless of protected conduct, consistent with *Wright Line,* the allegations should be dismissed." (R. Br. at 16.)

I find in agreement with the Respondent, based upon the documentation provided respecting the evaluation process, that the Respondent's annual evaluations of Wang's performance

figures—which produced the reduced bonuses under challenge —turned on objective circumstances involving fewer articles and her absences from work and did not sound in her protected activities. To reach a contrary conclusion as the General Counsel argues would involve a rejection of the calculations offered by the Respondent. To do this would require a finding that the Respondent's evaluators were in essence fabricating the evaluating process of Wang and denigrating her work to sustain an evaluation process put in place to punish her for her protected/union Board activities. I am unable to go so far on this record. Thus I find, even assuming the General Counsel has established a *Wright Line* prima facia case, the Respondent would have reached the evaluation conclusions it did, and thus the consequential bonus reductions resulting from those annual evaluation ratings, even if Wang had not engaged in protected concerted, union or Board-related activities. Thus I find and conclude that Wang did not suffer from improperly reduced bonuses as alleged. Accordingly, I shall dismiss the General Counsel's subcomplaint paragraphs 6(d), 6(e) and 6(f)

(2) Employee Yun-Min Pao - Complaint, subbparagraphs 6(g), 7(b) and (c)

Complaint paragraph 7(b) alleges: "About January 2002, the Respondent decreased the amount of Pao's [2001] annual bonus." Complaint paragraph 7(c) makes the same allegation respecting Pao's 2002 annual bonus. The complaint further alleges this conduct occurred because of the employee's union and concerted activities and to discourage employees from engaging in such activities. Complaint paragraph 6(g) alleges: "About January 2004, the Respondent decreased the amount of Pao's [2003] annual bonus." The complaint further alleges this conduct occurred because of Pao's Union and concerted activities and to discourage employees from engaging in such activities and because Pao testified in Board matters and/or attended a Board representation hearing.

Employee Yun-Min Pao was a long-time employee and was at all times evaluated as an editor. The bonus evaluation system is similar to that for reporters. His performance scores over a period were as follows:

Editor Yun-Min Pao

Year	Total Score	Category Rank	Supervisor Adjustment[14]
1997	81	4	-1
1998	78	5	0
1999	79	5	-1
2000	83	4	0
2001	74	5	0
2002	74	5	-2
			-4
2003	73.4	5	0
			-5.6

There is no doubt that Mr. Pao was actively engaged in union organizational activities or that the Respondent's agents well knew it. Mr. Pao's role in the events under challenge in earlier considered paragraphs of the complaint are discussed above.

Mr. Pao's unhappiness with his reduced annual bonuses turns reasonably on a diminution in dollar or percentage totals. Since he had never had the process explained to him nor received a written explanation, he was unable to determine how the dollar amount of his bonus turned on the Respondent's particular evaluation of him compared with a reduction to all35 bonuses due to company wide profit and loss issues.

The General Counsel's theory, as narrowed in the general discussion of bonuses above, is that the aspects of the evaluation process unique to Mr. Pao were discriminatorily applied because of his protected conduct. Thus, Mr. Pao's final total score, which determines placement within the more general bonus calculation matrix, is at the heart of the matter. And further, since the General Counsel's argument centers on supervisory reductions of the initial scores, the allegation of discrimination made by the General Counsel does not seem to be on the initial ranking of Pao by Director Chu, but rather the later total score reductions by Deputy Chief Editor Fang and Chief Editor Chen. And, since Mr. Fang did not reduce Pao's score in 2001 or 2003 and reduced all editorial scores by a uniform 2 points in 2002, the General Counsel's case in each of the three years at issue seems to rest on the validity of Chen's actions.

Turning to the 2001 score reduction, Chen reduced Pao's total score from 75 to 74. Since all relevant employee evaluation scores falling anywhere in the seventies place those employees in the "satisfactory" category, denoted herein generally as category 5, and since all employees who are evaluated as satisfactory receive the same percentage salary bonus in any given year, Chen's actions did not result in any change to Pao's bonus amount. And since the complaint alleges that bonus amounts were changed, not that annual evaluation performance scores were reduced, Chen's conduct may not be held to have violated the Act as alleged in the complaint. Since there is no other basis to find that Pao's 2001 pre-Chen adjusted score was discriminatorily Iowered[1515] sufficient to change the category he was classified in and thus to reduce his January 2002 bonus, the allegation in subparagraph 7(b) fails for want of proof and shall be dismissed.

In the 2002 evaluation of Pao, Director Chu gave him a score of 80, Deputy Editor Fang reduced it by 2 points to 78 and Editor-in-Chief Chen reduced it a further 4 points to a final score of 74. Put another way, Chu's ranking of Pao placed him in the above-average category[1616], Deputy Editor Fang reduced Pao's score sufficiently to drop him into the "satisfactory" category (70-79), and Editor-in-Chief Chen dropped Pao's score further but did not do so to the extent that Pao's category changed. In this perspective, it was Fang not Chen who reduced the bonus of Pao from the higher percentage of annual salary awarded all

[14] Where two adjustments are noted, the first was undertaken by Deputy Chief Editor Fang and the second by Editor-in-Chief Chen.

[15] As noted, Director Chu's decisions were not under attack by the General Counsel. Were the decisions under attack here, given the absence of sufficient evidence to meet the General Counsel's burden that Chu's decisions were at least informed by, let alone motivated by, personal animas against Pao or taken at the command of another, I would find Chu's rating of Pao free from discrimination

[16] The classification "Above Average", herein referred to as category 4, requires a score of 80 — 84.

who are classified "above average" to the lower percentage of annual salary that is awarded to those who are classified as "satisfactory".

Deputy Editor Fang in the 2002 evaluations lowered all editor scores by the identical 2 points. The General Counsel did not provide any evidence to suggest that Fang's uniform reduction of all editors' scores, even if it reduced Pao's classification, was discriminatorily motivated. Indeed Fang's reductions lowered the bonus classifications of 6 of the 14 editors he evaluated that year. Chen thereafter lowered the scores of 6 editors and raised the score of another. His actions however changed only one editor's classification, i.e. changed the amount of the editor's annual bonus. That editor was not Mr. Pao whose bonus was unchanged by Chen's reduction of his score 78 to 74, each score being within the "satisfactory" classification.

Putting the pieces together, three supervisors were responsible for Pao's ranking in 2001 and therefore his bonus on January 2002: Chu, Fang and Chen. Again, I do not find sufficient evidence to suggest Director Chu's initial score was other than based on his perceptions of Pao's merit. Similarly, I find Fang's uniform reduction in all editors' scores by 2 points each, not to be an act of improper discrimination against Pao even though it did reduce his bonus amount by moving him from an 80 score and an "above average" classification to a 78 score and a "satisfactory" classification. Finally, Chen's actions did not change Pao's classification and therefore did not change the amount of his bonus. I find therefore that the General Counsel's complaint subparagraph 7(c) is without merit and will be dismissed.

The last of the three Pao bonuses under attack is the January 2004 bonus based on the 2003 evaluation. The 2003 evaluation is somewhat different in that monthly evaluations were undertaken and then apparently averaged to produce the annual totals. It is also not clear if Deputy Editor Fang has a role in reviewing or at least in modifying the scores of editors. Mr. Pao was given an initial score of 79 by Director Chu and after supervisory review came to have a score of 73.4. Again Chu's score was not directly attacked by the General Counsel and there is no evidence to suggest that score was improperly determined. Thereafter, while the reduction in score by reviewing supervision, in this case Chen, was large—4.6 points—it did not lower Pao's classification. Since an employee's classification, not his score within the classification, determines the percentage of annual salary to be given an employee each year as a bonus, the later reviews did not lower the bonus amount based on the 2003 evaluation and received by Pao in January 2004. Again, I find Chu's initial score free from discrimination. Since that score determined the bonus amount that Pao ultimately got and there was no subsequent change in that classification, there was no improper reduction of the bonus by the Respondent. I shall therefore dismiss complaint subparagraph 6(g).

(3) Employee Hui Jung Lee — Complaint subparagraphs 7(d) and (e)

Complaint paragraph 7(d) alleges: "About January 2002, the Respondent decreased the amount of Hui Jung Lee's [2001] annual bonus." Complaint paragraph 7(e) makes the same allegation respecting Hui Jung Lee's 2002 annual bonus. The complaint further alleges this conduct occurred because of the employee's union and concerted activities and to discourage employees from engaging in such activities.

Ms. Hui Jung Lee, a former employee of the Respondent from 1990 till August 2001, was the spouse of union activist Editor Pao, an active and public supporter of the Union and was the subject of improper importunities found violative of the Act, supra. Ms. Lee served as the sole archivist until the position was eliminated in September 2001 at which time she was transferred to the sales department as an account executive.

Lee's annual evaluation scores as the archivist were done by the editorial department. She received consistent scores of 85 in the years 1997, 1998, 1999 and 2000. Those scores placed Lee in the 85-89 "Excellent" category and she received a bonus each January following the year of her evaluations based on the formula provided each year for that category.

Calendar year 2001 was the year of Lee's transfer from archivist in the editorial department to account executive in the sales department. The record establishes that the Respondent has procedures for handling the annual evaluations of transferred employees, but that they were not applied in Lee's case in the 2001 evaluation period. Editor-in-Chief Chen in effect admitted that his department had not followed procedures and done no evaluation of Lee. He testified that when he was informed that neither editorial nor sales had evaluated Lee and, when he was notified of that fact by the Respondent's Accounting Department, they suggested and he agreed that it was very fair that she should be given a "satisfactory" rating even without an annual evaluation and a bonus would be given to her based on that status. This was in fact done.

Mr. Chen testified that the treatment of Lee, while unusual and based on an inadvertent failure to follow procedures correctly in evaluating her, was not done for discriminatory reasons. Accounting, with no knowledge of Lee beyond her identity as an employee who had not received an evaluation, had suggested a course—assignment of the satisfactory rating - which seemed reasonable and which he accepted.

Lee worked the full year of 2003 in the sales department as an account executive and received an annual evaluation for that year prepared by the sales department. She received a total score of 70 for a "satisfactory" classification which is awarded to all scores in the 70s. Sales Director Yang testified that Lee's total was lowered by the fact that she received only 5 out of a possible 20 points for the diligence portion of the scoring process which was used in the Sales Department evaluations to measure effort on special promotions.

The General Counsel argues that the Respondent's excuse for not giving Lee an evaluation in 2001 is disingenuous. Counsel for the General Counsel argues further:

> Even if this were so and it was a genuine oversight, there is no explanation as to why Chief Editor Chen thought it fair to give her only a satisfactory rating and the lowest possible bonus in the absence of evidence that her performance in either position was inadequate." (GC Br. 106.)

The Respondent notes that there is no dispute that the editorial department archivist position was done away with for business reasons and that Lee was transferred properly to the sales

department thus showing it had no animosity towards her. The Respondent also notes the testimony of Chen that in 2001 Chen had problems with Lee's performance and had given her a letter addressing problems she was having keeping up with her work.

The Respondent notes the testimony of Chen that the failure of the editorial department to evaluate Lee was innocent and inadvertent and that the accounting department recommendation to give Lee a bonus without an evaluation was clearly expedient and not malicious. The Respondent does not directly address the General Counsel's argument that Chen should have asked for a classification of "excellent" for Lee as she had received for many years up to that time which would have produced a larger bonus on January 2002. Chen's testimony seems to suggest that he was nonplussed by the accounting department's call which revealed his department's failure to evaluate Lee and in such a state quickly acquiesced in their suggestion of a satisfactory classification in lieu of the missing annual evaluation.

I have carefully considered the record as a whole on this issue and in particular the testimony of Chen. I find that the General Counsel has not established his initial burden under *Wright Line* that the bonus of Lee was reduced in consequence of her protected activities. Rather I find that Chen's testimony of an inadvertent mistake was credible as well as plausible. Were the Respondent intent on reducing Lee's bonus because of her protected activities, the safer course would have been to have evaluated her. I am simply convinced the omission was not knowing or malicious. Further, I am not persuaded that Chen's failure to suggest a higher classification be assigned to Lee in his conversation with the accounting department establishes the government's case here. Confronted with his department's error, I think it quite plausible that Chen would be pleased to accept their suggestion and put the matter behind him. I found his demeanor during this portion of his testimony persuasive. I shall therefore dismiss complaint subparagraph 7(d).

The sales department evaluation of Lee in 2002 was defended primarily by testimony that Ms. Lee did not meet volume expectations and tended to focus too much on low volume quality work rather than higher volume revenue producing efforts. The General Counsel focused on the fact that one sales department employee received a 68 or unsatisfactory classification score in his annual evaluation, but was lifted to a satisfactory rating. I do not find this argument persuasive as a basis for finding the evaluation of Lee to be duplicitous.

Based on the record as a whole and, in particular the credible testimony of sales staff Robert Yang and Pauline Liu respecting Lee's troubles adjusting to the approach required by the sales department, I find that the 2002 evaluation of Lee and therefore her January 2003bonus were not reduced because of her protected activities. As with Lee's evaluation of the prior year, I find the General Counsel has not established his initial burden under *Wright Line* that the bonus of Lee was reduced in consequence of her protected activities. I shall therefore dismiss complaint subparagraph 7(e).

e. The Suspension and discharge of Jing-Hua Zhang – Complaint subparagraphs 7(g) and

The complaint at paragraphs 7(g) and 7(h) allege that the Respondent suspended employee Jing-Hua Zhang on April 22, 2003, and terminated him on May 5, 2003. The complaint further alleges this conduct occurred because of the employee's union and concerted activities and to discourage employees from engaging in such activities.

(1) Evidence

Mr. Jing-Hua Zhang began his employment in the Respondent's printing department in 1999, but transferred to the circulation department in 2000 where he worked as a delivery driver until his termination. The series of events involving the earlier vote for a driver foreman, the selection of Mr. Chiang as the foreman, and the employees' concerted efforts dealing with that proposition as well as the Respondent's agents' reaction to the employees' efforts has been discussed earlier.

Mr. Zhang testified that in late 2002, Mr. Chiang began to leave notes for the other drivers instructing them to undertake tasks such as checking the bulletin board at the end of the working day before going home. The driver employees were unhappy at his assumption of authority and at about the turn of the year, met and selected Zhang as their spokesman to speak to their supervisor, Director Hsu, about Chiang. Zhang spoke to Director Hsu in the parking lot thereafter telling Hsu that the drivers were unhappy with Chiang's instructions to them and felt he was pressuring them. Director Hsu listened but did not respond. Zhang reported back to the other employees who counseled a wait and see approach.

When nothing occurred, the employees determined that talking was insufficient and decided to submit a petition to management. Zhang testified he and driver Sun drafted the first petition, Zhang and others signed it and submitted it to management via the "opinion box". Zhang then had a conversation with Business Manager Gao. He went to Gao's office and told him that the employees did not want Chiang as their supervisor. He also met with President Su and told him the drivers were all against Chiang as foreman. President Su, he recalled, told him the employees should not submit jointly signed documents like the petition for union organization.

At relevant times the Respondent employed approximately 12 truck drivers who worked from approximately 2:45 a.m. until 9:45 a.m. In the early morning as the newly printed papers became available, the drivers loaded the newspapers into their trucks and took them to various retail delivery points. The drivers drove fixed routes and knew how many newspapers were on order for each route. The correct number of copies were loaded onto the trucks and, once loaded, the drivers then drove their routes and returned to the plant and the conclusion of the work day.

In addition to the set number of papers provided to supply the daily orders, additional copies were made available to the drivers who used them for several purposes. These additional copies were used by drivers to replace damaged copies discovered when the papers were delivered and to make up for inadvertent shortages in the amount of the papers provided for delivery to a particular location. The drivers were also provided with additional copies, referred to as "freebee" or "PR" (public relations) copies of the newspaper which could be provided gratis to retailers to enhance customer relations.

Circulation Director Hsu testified that drivers selling copies of the newspaper personally for their own benefit was a problem. The Respondent regularly received complaints from its retailers that the retailers were observing the Respondent's drivers selling newspapers from their trucks to the retailer's customers. In December 2002 Hsu testified he had received reports that caused him to believe 2 or 3 of his employees might be involved. Although the sale of newspapers had long been against company policy, Hsu decided to post a notice to drivers on the subject and caused driver foreman Chiang to do so. The following notice was posted on or about the date it bears.

> All the truck drivers, employees, please be patient. I announce one more time to inform the drivers that if they sell—this behavior, it is strictly prohibited, means to sell the newspaper in private, during the route. And if you get caught for selling the newspaper in private, the only penalty is termination of employment. I hereby ask everyone to think it over. For those that did not do it, please maintain your behavior. For those have done, please stop immediately. Signed Jiang Ming. Dated December 29, 2002.

In February 2003, Hsu testified he received written reports from the packing department that indicated that Jin Hua Zhang had been observed over a period of time taking substantial numbers of extra newspapers when the packing employees were on break. One report indicated Zhang leave with his truck as if to commence his route, but would then circle the block, park, enter the building through another entrance and then secretly acquire additional newspapers and take them back to his truck.

Circulation Director Hsu reported these events to Business Manager Gao. The Respondent limited and began to more closely monitor the issuance of additional or extra copies of the newspaper to the drivers. Mr. Sun testified that until that time drivers were essentially free to simply help themselves to the number of papers they desired. At the drivers luncheon meeting discussed above in which Chiang spoke for the first time as the driver foreman, Business Manager Gao announced that extra papers must be requested of the Director who would provide them. Thereafter the employees in effect signed up for extra copies prior to receiving them.

Zhang testified that in early March 2003 Hsu approached him in the parking lot and instructed him:

> [Hsu] said someone said you took the newspaper. You have to write to—write it down on the written report. I say everyone take the newspaper. Why you ask me to write?
>
> . . . Direct[or] Hsu just said, 'We just ask you to do it when you go home, because write the report."

Circulation Director Hsu testified he told Zhang that if he would write a report and admit his mistakes, the matter would be dropped.[17] Zhang submitted his report which did not address nor confess to taking excessive copies of the newspaper nor of selling them personally. It merely said that Zhang would follow the company regulations and "aggressively co-operate with departmental leadership" and contribute more to the department. Driver Zhang testified that Hsu was unhappy with his report and pressed Zhang for specifics which Zhang told him he could not recall. Director Hsu told him that if he was not going to cooperate, the company could institute legal proceedings against him. Zhang then spoke to President Su about the matter, but was simply told to work hard and co-operate with his supervisors. He then spoke to Business Manager Gao. Zhang described the conversation:

> Q. And what was said during this conversation in Mr. Gao's office?
>
> A. I said I went to see President Su, finish the conversation with him.
>
> Q. What else was said?
>
> A. And Manager Gao mentioned about President Su.
>
> Q. What did he say?
>
> A. That we will—that make myself into steward, when that happened, then that's it. Q. I don't think I understand. Tell me what was said in this conversation. A. I went to see Manager Gao. I said, "I just finish my conversation with President.

At Gao's instruction Hsu viewed the Respondent's security system tapes in the areas described in the reports for the period November 2002 through February 2003. Gao was directed to a particular tape and both Gao and Hsu viewed the tape of December 3, 2002. Each testified the tape clearly identified driver Zhang as the person described in the reports. Mr. Zhang was suspended on April 22, 2003, without pay, pending investigation of the matter. On May 5, 2003, Zhang was terminated for theft.

The Respondent's agents denied that Zhang was fired for any reason other than the theft of newspapers and his failure to admit and recant his conduct when given the opportunity. Both Hsu and Gao testified they were not aware of Zhang's union activities if any and that his role in the driver's protests regarding the driver foreman was not a factor in the termination decision.

(2) Analysis and conclusion

The General Counsel argues that it is clear that the Respondent's agents were aware of Zhang and other drivers' concerted efforts respecting foreman Chiang and that Zhang had spoken to them on the issue. As discussed supra, violations of the Act have been found respecting that series of events. The General Counsel further argues the newspaper "theft" events were inextricably interwoven with the foreman issue and the theft issue was but pretext for an assertion by the Respondent of its general authority over the drivers who had been resisting that authority in challenging the forman appointment.

Finally the General Counsel argues that Zhang at all times admitted he used extra copies of the newspapers as other drivers did, in the legitimate use that management approved. He argued

[17] Chu testified:

> In the Chinese tradition we want to give a chance if he admit he did make mistake, we will give him the chance—as a matter of fact, we already have at hand, we just want him to admit mistake and we will let by-gones be by-gones and continue, let him continue to deliver the newspapers here.

he only did what others did and did not steal or sell the papers. The investigation of the Respondent proved no more. Thus Counsel for the General Counsel argues, it was not reasonable for the Respondent to believe that Zhang was engaging in exceptional, let alone improper conduct. Rather, the government argues, the Respondent engaged in a sham, after the fact investigation designed to justify the termination of Zhang and that it at no time had a reasonable belief that he was committing theft.

The Respondent argues the evidence is clear. It was at all relevant times concerned that its property was being stolen and sold. There was no evidentiary dispute that it received third-party reports that this was so. Again there was no evidentiary dispute that it had received employee reports that newspapers were being stolen and that Zhang was the driver doing so. It was able to confirm Zhang's identity as the driver taking papers out of the building from the surveillance tape. Thus, argues the Respondent, the Respondent would have fired Zhang regardless of any protected activities he might have engaged in.

The allegation may be best considered first by assuming the General Counsel has met its burden under *Wright Line* and to turn to the Respondent's defense. In *McKesson Drug Co*., 337 NLRB 935, 936 fn. 7 the Board noted:

> In order to met its burden under *Wright Line* (i.e., to show that it would have discharged the employee even in the absence of protected activity), an employer need not prove that the employee committed the alleged offense. However, the employer must show that it had a reasonable belief that the employee committed the offense, and that it acted on that belief when it discharged him. See *Yuker Construction*, 335 NLRB 1072 (2001) (discharge of employee based on mistaken belief does not constitute unfair labor practice, as employer may discharge an employee for any reason, whether or not it is just, so long as it is not for protected activity); *Affiliated Foods*, 328 NLRB 1107, 1107 and fn. 1 (1999) (it was not necessary for employer to prove that misconduct actually occurred to meet burden and show that it would have discharged employee regardless of their protected activities; demonstrating reasonable, good-faith belief that employees had engaged in misconduct was sufficient); and *GHT Energy*, 294 NLRB 1011, 1012–1013 (1989) (respondent met *Wright Line* burden by showing that employees would have been suspended even in the absence of their protected activities , because Respondent reasonably believed they engaged in serious misconduct endangering other employees and the plant as itself).

It is initially relevant to set forth what was not in issue and what is not being decided herein. I am not deciding and the parties were not arguing whether or not Zhang did in fact engage in the misconduct attributed to him by the Respondent. That is so because it is not the objective truth of circumstances, but rather what the Respondent's motivations were at relevant times that determines the legality of the discharge. Thus, the question initially at hand is whether or not the agents of the Respondent in deciding to suspend and then terminate Zhang took that action based on a good-faith belief that he had engaged in theft of the Respondent's property.

I have considered the evidence including the record as a whole and the testimony and demeanor of the witnesses on the question of the Respondent's motivations in suspending and terminating him. I conclude that the Respondent did in fact believe that Zhang had taken newspapers for private sale and that he had refused to acknowledge that fact and recant of his actions and that he was suspended and then discharged in consequence.

I reach this determination in essence because I accept the logic of the Respondent's chain of circumstances, and simultaneously reject the General Counsel's attacks upon it. Thus I find, as the Respondent argues, that it hear third-party reports of the private sale of its newspapers by its drivers—i.e., of the theft and sale of its product. It then learned that Zhang was taking significant quantities of newspapers covertly and suspiciously. Finally, it was able to confirm by surveillance tape the suspicious behavior of Zhang. This chain of events led, I find in crediting the testimony of Gao and Hsu, to their good-faith belief that Zhang was a t least one of the drivers stealing and then selling newspapers against longstanding company rules. I further find that, given their good-faith belief, the decision to terminate Zhang was also taken in good faith and for the reason of his misconduct and not for other reasons. In effect, I find that the Respondent would have suspended and discharged Zhang on this basis even in the absence of protected conduct. It follows therefore that the General Counsel has failed to sustain complaint allegations 7(g) and 7(h) and they will be dismissed.

Summary

I have found the following complaint paragraphs and subparagraphs were sustained and will be remedied, below: 6(b), 8(c), 8(d), 8(f), 8(g), 8(h), 9, 10, 11, 13, 16, 17, 18, and 19.

I have found the following complaint paragraphs and subparagraphs were not sustained and will be dismissed: 6(a), 6(c), 6(d), 6(e), 6(f), 6(g), 7(a), 7(b), 7(c), 7(d), 7(e), 7(f), 7(g), 7(h), 8(a), 8(b), 8(e), 12, 14, 15, and 20.

REMEDY

Having found that the Respondent violated the Act as set forth above, I shall order that it cease and desist there from and post remedial Board notices addressing the violations found. Further the language on the Board notices will conform to the Board's decision in *Ishikawa Gasket America, Inc.*, 337 NLRB No. 29 (2001), that reiterates the logic of the proposition that remedial notices should be drafted in plain, straightforward, layperson language that clearly informs employees of their rights and the violations of the Act found.

The General Counsel requests that the notices be in both Chinese and English. Inasmuch as the employees are virtually without exception Chinese speakers with limited English, the request is appropriate and bilingual notices will be directed.

Respecting the finding that Wang's beat assignments had been improperly increased in late June 2001, the record reflects that subsequent beat adjustments have occurred which are not under challenge herein. It follows that a status quo ante remedy requiring the Respondent to restore the beat assignment that Ms. Wang carried before these late June additions were made is unnecessary and inappropriate. I shall therefore not direct additional remedial steps respecting that violation.

The General Counsel requested that the remedy herein include an order requiring a responsible official of the Respondent to

read the notice to employees in both English and Chinese. I do not find the nature and quantum of violations found support that request. I therefore deny it.

The essentially Chinese language only aspect of the Respondent's staff in my view requires an additional direction. It has been my habit for years to affix to the bottom of any directed remedial notice additional language informing employees and other interested parties that they may obtain the entire decision of which the posted notice is but a part by contacting the appropriate regional office. To my knowledge no party in any matter in which such language has been included has ever excepted to this language nor has the Board ever commented on it. In this case, and in the unique circumstances presented, I find it is further appropriate to request of the Board that the final Board decision in the case, which would be the instant administrative law judge decision or the Board's decision on exceptions, or the Board's decision if modified by subsequent review, also be translated into Chinese and copies in Chinese made available to interested parties as well as an English-language version of the final decision are made available.

4. The Respondent violated Section 8(a)(4), (3), and (1) of the Act on or about June 15, 2001, by imposing more onerous terms and conditions of employment on employee Lien Wang by changing her job assignments by adding to her beat.

5. The unfair labor practices described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

6. The Respondent did not otherwise violate the Act as alleged in the complaint and the complaint allegations not sustained shall be dismissed.

ORDER

Based upon the above findings of fact and conclusions of law, and on the basis of the entire record herein, I issue the following recommended Order.[18]

The Respondent, Chinese Daily News, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Instructing employees to abandon their support for the Union and threatening employees with unspecified reprisals if they continue their support for the Union;

(b) Encouraging an employee to resign because of the employee's union activities and sympathies;

(c) Blaming an employee who supported the Union for the decrease in all employees' annual bonuses;

(d) Prohibiting employees from speaking about the Union and threatening employees with termination if they spoke about the Union.

(e) Soliciting employee complaints and grievances and promising employees increased benefits and improved terms and conditions of employment if they refrained from union organizing activities.

(f) Prohibiting employees from discussing working terms and conditions of employment;

(g) Threatening employees with job loss because of their support for or selection of the Union as their bargaining representative.

(h) Threatening an employee with unspecified reprisals for engaging in union and protected concerted activities.

(i) Interrogating an employee about the employee's union and/or protected concerted activities, and the Union and/or protected activities of other employees.

(j) Interrogating an employee about the employee's union and/or protected concerted activities.

(k) Instructing an employee not to sign letters or petitions or to otherwise engage in concerted activities.

(l) Threatening employees with promotion of a foreman about whom employees had concertedly complained, in retaliation for the employees concerted activities.

(m) Imposing more onerous terms and conditions of employment on employee Lien Wang by changing her job assignments by adding to her beat.

(n) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

a. Within 14 days service by the Region, post copies of the attached Notice at it Monterey Park, California facilities set forth in the Appendix[19]Copies of the notice, on forms provided by the Regional Director for Region 21, in English and Chinese, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including places where notices to employees are customarily posted in each of the facilities where unit employees are employed. Reasonable steps shall be taken by the Respondent to ensure the notices are not altered, defaced, or covered by other material. In event that, during the pendency of these proceedings, the Respondent has gone out of business or closed one or more of the California facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed facility at any time after June 13, 2001.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

The allegations of the complaint not sustained herein shall be, and they are hereby are, dismissed.

San Francisco, California, February 25, 2005

[18] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
National Labor Relations Board
An Agency of the United States Government

After a trial at which we appeared, argued and presented evidence, the National Labor Relations Board has found that we violated the National labor Relations Act and has directed us to post this notice to employees in both English and Chinese and to abide by its terms.

FEDERAL LAW GIVES EMPLOYEES THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

Accordingly, we give our employees the following assurances.

WE WILL NOT instruct employees to abandon their support for the Union.

WE WILL NOT threaten employees with unspecified reprisals if they continue their support for the Union.

WE WILL NOT encourage an employee to resign because of the employee's union activities and sympathies.

WE WILL NOT blame an employee who supported the Union for the decrease in all employees' annual bonuses.

WE WILL NOT prohibit employees from speaking about the Union and threaten employees with termination if they speak about the Union.

WE WILL NOT solicit employee complaints and grievances and promising employees increased benefits and improved terms and conditions of employment if they refrained from union organizing activities.

WE WILL NOT prohibit employees from discussing working terms and conditions of employment.

WE WILL NOT threaten employees with job loss because of their support for or selection of the Union as their bargaining representative.

WE WILL NOT threaten an employee with unspecified reprisals for engaging in union and protected concerted activities.

WE WILL NOT interrogate an employee about the employee's union and/or protected concerted activities, and the union and/or protected activities of other employees.

WE WILL NOT interrogate an employee about the employee's union and/or protected concerted activities.

WE WILL NOT instruct an employee not to sign letters or petitions or to otherwise engage in concerted activities.

WE WILL NOT threaten employees with promotion of a foreman about whom employees had concertedly complained, in retaliation for the employees concerted activities.

WE WILL NOT impose more onerous terms and conditions of employment on employees by adding to reporters' beats when they engage in protected concerted activities.

WE WILL NOT In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

CHINESE DAILY NEWS